ABSTRACT PRINCIPLES OF LAW,

CIRCULATED FOR THE

GUIDANCE OF OFFICERS

EMPLOYED IN THE

ADMINISTRATION OF CIVIL JUSTICE

IN THE

Punjab.

TO WHICH IS APPENDED

A PROPOSED FORM OF PROCEDURE.

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FROM

R. MONTGOMERY, ESQUIRE,

Judicial Commissioner for the Punjab,

To

THE COMMISSIONER AND SUPERINTENDENT,

Dated Lahore, the 16th May 1854.

SIR,

Judicial. Civil.

ON the 21st July last, I submitted, for the consideration of the Chief Commissioner, some Rules for the better administration of Civil Justice in the Punjab. They consisted of two parts: the first relating to the Principles of Law, the second to Procedure. The Chief Commissioner forwarded them for the approval of His Lordship in Council, and solicited that they might be issued for the guidance of the Officers in the Punjab.

2. The Government of India decided that the Rules could not be promulgated under their authority till they had been considered in the Legislative Department, and that this would cause delay.

3. But the Government of India saw no objection to the Chief Commissioner himself circulating the Rules of Law, if he saw fit, so that they might have the same force as Circulars of the Sudder Court.

4. With regard to the Procedure Sections, the Government of India directed that they should be referred to the Commissioner now sitting in Calcutta, for the purpose of simplifying the Code of Procedure for India generally, and as an aid to them in their present labours.

5. Under the authority, then, of the Chief Commissioner, conveyed to me in his Secretary's letter, No. 177, dated 15th April 1854, I hereby circulate, for the information and guidance of all Officers in the Judicial Department, the Law Sections with the comments thereon.

6. I invite suggestions from yourself and your District-Officers in regard to the improvement of the Principles of Law, wherever the result of experience may show them to be faulty or defective.

7. I, at the same time, take the opportunity of circulating the Rules of Procedure, which, in the absence of any sanctioned form, embody the system which is approved by me, and is already followed in the best administered Districts under my authority.

I have the honor to be,

SIR,

LAHORE,
The 16*th May* 1854.

Your most obedient servant,

(Signed) R. MONTGOMERY,

Judicial Commisioner.

PREFACE.

The present Compilation does not pretend even to an attempt at the Codification of Civil Law; nevertheless, the Judicial Commissioner, pursuing the course commenced by the late Board at Lahore, and desiring to advance the Administration of Justice to a state of vigour and maturity, has been induced to submit, for the consideration of superior authority, a brief series of legal principles, which may serve, at least as a guide to the enquiries of Civil Officers, and as a foundation on which a more complete system for the Punjab may be hereafter raised.

It has been the constant aim of the Punjab Administration to throw open the Courts of Justice to the mass of the population. Increasing litigation would seem to show that the people are not slow to employ the opportunity thus offered them. A necessity then arises, not only that suits should be tried and conducted by an easy, yet precise, method, but also that they should be decided on plain and certain principles. The best mode of procedure will generally be dictated by experience; but at present there is not any source from which Judicial Officers can draw principles of Law, worthy of being adopted with confidence. The Punjab presents a great diversity of tribes and races, and a corresponding diversity of Laws and Customs. By some classes the Hindoo and Mahomedan Codes are acknowledged; but there is often a doubt to what portions of those Codes the observance extends, and with what degree of strictness it is carried into practice. There is still more room for reflection as to how far these Laws are affected by, or merged into local custom, and in what places they altogether yield to that unwritten Code which is engraven in the minds of the people. Again, there is much variety of custom to be met with: the usage of trade, the practice of the land-holding community, the tenets of the Sikh sect, the manners of the Hill and Frontier tribes—all claim consideration. When these several races become the subjects of one great power, and when these systems, so diversified in their many phases, fall under the same

administration, then those who resort to our Courts may, naturally, feel some uncertainty as to what rule will be observed, what rights upheld, what Laws introduced, under what conditions, and to what extent each Law will be superseded by Custom. On all these interesting questions, the Judicial Officer may be no better informed than the public themselves; and even if he were assured on what points the Hindoo and Mahomedan Law should be followed, there would still be some difficulty in ascertaining the minute provisions of those Laws. For learning does not yet flourish among the inhabitants of the Punjab; and although Runjeet Sing did, occasionally, support Hindoo and Mahomedan Lawyers and Doctors by public grants, still, in many localities, there does not exist any class of Pundits and Mooftees, whom our Judicial Officers might conveniently consult; and it will be explained subsequently that there are no materials from which an intelligent and trustworthy Native Bar might be constituted. Nor could aid, in this respect, be derived from the Regulations, inasmuch, as they, for the most part, refer to the Hindoo and Mahomedan Codes. Under these circumstances, it appeared to the Judicial Commissioner, that a compendious abstract of principles, in the various branches of Civil Law, taken partly from the Regulations and partly from European Jurisprudence, and the whole framed with a regard to the known peculiarities of the country, might not be without use to those who preside in the Courts, and to those whose rights and interests may become the objects of litigation.

For this end, the Judicial Commissioner first caused a draft of the proposed Rules to be prepared under his immediate direction, comprising an abstract of the Hindoo and Mahomedan Laws, and some principles from the English Law, on certain topics not aptly treated of in the Native Codes. The English draft, together with an explanatory comment on each Section of it, was circulated among all the Commissioners and District Officers, and also a select number of Assistants. Translations were distributed among all the Native Extra Assistants, and among those residents of the Province, who, from their local knowledge, professional skill, learning, or high character, might be qualified to give sound advice; and special enquiries were made with reference to the commercial portions of the draft, from the heads of the mercantile community at Lahore and Umritsur. All those who received copies were requested to return them to the Judicial Commissioner, with their remarks; and the Native Gentlemen were

specially directed to state in what respects the Rules would be applicable, or inapplicable, to the people of the Punjab. The copies, when returned from circulation, were found to contain a great number of useful suggestions, varying of course in their scope and tenor, according to the peculiarities of different places. These suggestions have been all studied, and in many instances adopted, and the entire draft having been re-written, a revised copy is now submitted.

The Rules consist of two Parts, the first relating to Principles of Law, the second to Procedure, that is, there are directions, first as to what is to be done, and then as to the method of doing it. Each Part has been divided into Sections and each Section into Clauses. For each Section there has been appended a comment, stating briefly the reasons of the Rules proposed, and then differences, if any, between them and other systems. The various authorities from which the doctrines of Native Law have been collected are also given. It will be sufficient here to state, that the works chiefly relied on are those of Sir W. Jones, Sir T. A. Strange (of Madras,) Sir W. Macnaghten, and Mr. H. T. Colebrooke. The Procedure is partly founded on the Punjab Rules promulgated shortly after annexation. The Regulations also, illustrated by Mr. Macpherson's learned labours, and relating, as they do chiefly to Procedure, are calculated to furnish abundant materials. But it is believed that this system, created by a long series of Enactments, Constructions, Circular Orders, and reported decisions, is too elaborate for a comparatively simple people and a newly-acquired Province. The provisions of the County Courts Acts in England, (as expounded in the pages of the *Law Review* and the *Law Magazine*,) and the Acts for the recovery of small debts in the Presidency towns, have also been consulted. It is not indeed hoped, that the First Part contains anything approaching to a digest of Law or of rights. Omissions and imperfections may, doubtless, be discovered in every Section. Still the principles are believed to be correct, as far as they extend, and to merit the attention of Judicial Officers in the Punjab, in the absence of any other and better treatise. They will at least awaken and direct reflection; and as they are tried by the test of practical experience, and brought into closer contact with local custom, the numerous suggestions which may be expected from the many able Officers, stationed in various parts of the Province, may furnish matter for amended versions and new editions hereafter; and perhaps, also, for a complete

analysis and epitome of the Lex Loci throughout the Punjab. Impressed then with such views, the Judicial Commissioner would desire to offer these Rules, in the hope that this effort may not prove unacceptable, at a time when our general system of Civil Justice is being subjected to unsparing criticism and strict scrutiny.

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On Principles of Law comprises the following Sections :—

I.—Powers and competency of the Civil Courts.

II.—Evidence.

III.—Hindoo and Mahomedan Law, and Lex Loci.

IV.—Inheritance.

V.—Special Property of Females.

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XI.—Wills and Legacies.

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PRINCIPLES OF LAW.

Section I.

POWERS AND COMPETENCY OF THE CIVIL COURTS.

1. The Civil Courts may take cognizance of all suits and complaints respecting the succession, or right, to real or personal property; debts and accounts; contracts of all kinds; marriage, caste, adoption, and other social transactions; claims to damages for civil injuries of all kinds, such as domestic wrongs, defamation, including libel and slander; personal hurt not specially punishable by the Criminal Regulations; false and malicious charges and prosecutions; private nuisance; acts or words causing exclusion from caste; damage to person or property arising from gross negligence; and generally respecting all civil rights and matters, subject to such special exceptions as may be hereafter described.

2. But the following matters are *excluded* from the cognizance of the Courts :—A suit may *not* be brought,—

3. For any thing repugnant to positive law, morality or public policy;

4. For any matter that may have been decided by, or may be pending before, an authority, or tribunal, competent to try it. This clause will apply to decisions passed at a regular settlement, and to all cases relative to landed property in a district where such settlement may be in progress;

5. For any matter connected with the assessment, distribution, or realization of the public revenue (such as over-collection, sales, farms, transfers, attachments, kham holdings, and the like);

6. For any matter relating to the boundaries of mehals, mouzahs, or villages; or to alluvion and diluvion, that is, to land thrown up or carried away by the action of rivers;

7. For any matter cognizable in summary suits, such as rents or perquisities of land, arrears due from a co-partner to the lumberdar, illegal ejectment of tenant, or illegal attachment of his property, by landlord;

8. For the enforcement of accessory rights in landed property, such as the realization of talooquadaree allowances, chowdrees' dues, dhurut and

bazaar collections in villages and qusbehs. But nothing in this clause will bar any action relative to town collections, which may exist in any city, in addition to the duties leviable for municipal and police purposes;

9. In any matter relating to the grant or payment of pensions;

10. In any matter relating to jagheer, rent-free tenures, or other grants made by Government, whether temporary or permanent, or to the succession thereto, or to the shares, rights, and interests therein; nor are the Courts concerned in the realization of rents or revenues, by jagheerdars, mafeedars or rent-free holders; but if the jagheerdars or mafeedars shall have farmed those rents or revenues to a third party, possessing no proprietory rights in the estate, then suits between the jagheerdar or mafeedar, and such third party, may be entertained by the Courts;

11. In any matter arising out of a public endowment, (that is, whenever any grant of land, its revenues or perquisities, may have been made by Government for the use of any edifice or institution, secular or religious,) the Court cannot interfere in regard to the application or distribution of such funds, or the appointment of trustees or administration thereof. But nothing in this clause will prohibit the Court from taking cognizance of suits arising out of private endowments, made by individual appropriators or founders, or of suits connected with the distribution of offerings, or subscriptions made by the public in favor of any religious or secular institution, whether supported by grants from Government or not;

12. In any matter relating to the boundaries of Independent States, or feudal principalities;

13. In any matter relating to the proprietorship of Rukhs, or other reserved Government grounds, or to the compensation for land taken up for public purposes;

14. In any matter relating to canals, roads, or other works of public utility, to the construction, preservation, arrangement thereof, or to objections urged by private individuals with reference to such works;

15. In any matter relating to the proceedings of the Fiscal or Judicial Officers of Government;

16. In cases barred by the period of limitation, that is, twelve years from the date on which the cause of action may have arisen.

17. Suits regarding any matter or thing, within the jurisdiction of the Courts, may be brought by or against,—

18. 1*st.*—The Government, in its own name, or in the name of its officers;

2*nd.*—Independent Sovereigns and Chiefs, who may have been recognized as such by the British Government;

3*rd.*—Corporations who may have been privileged by legislative enactment, or by the chief local authorities, to sue or be sued in their collective capacity, or in the name of their office-bearers;

4*th.*—Persons resident beyond the limits of British territory (unless they be alien enemies,) provided that security for costs be furnished;

5*th*—All persons of every sort and condition resident within British territory, with certain exceptions to be hereinafter specified;

6*th.*—The duly authorized representatives of any party belonging to the classes above described, except the plaintiff, should sue in *formâ pauperis*, in which case the pauper must appear in person, unless the party should be a female of high rank.

19. A Hindoo or Mahomedan married woman may sue separately from her husband. Among the above classes husband and wife may sue each other.

20. Suits may not be brought by or against,—

21. 1*st.*—Minors, and persons incapable of managing their own affairs, such as lunatics and idiots, except in conjunction with their guardians and protectors;

2*nd*—English married women, except conjointly with their husbands, or except under those circumstances wherein, by the Law of England, they may sue or be sued alone. The same Rule will be applicable to married women of the class of East Indians of British descent;

3*rd.*—Alien enemies or subjects of a hostile power resident beyond the British territories.

Section II.

EVIDENCE.

1. The Courts will admit evidence of all kinds, without any restriction (except such as may be hereafter noted,) but they will be careful to obtain the best evidence, and will not accept secondary, when primary evidence may be procurable. As for instance, hearsay will not be taken when direct evidence is forthcoming, nor copies when originals can be obtained; nor is

the Judge restricted to the evidence tendered by the litigants; on the contrary, he is bound to seek for other evidence, if necessary. He will not decide a case till it shall have been elucidated in every manner which, in his judgment, may be needful or practicable.

2. Any person, capable of taking and comprehending an oath or affirmation, may be admitted as a witness: the parties themselves, their relatives, and others interested in the cause may bear testimony; a wife can give evidence against her husband, or the husband against his wife, without the consent of the other. But a legal practitioner cannot depose to circumstances made known to him in professional confidence without the consent of his client.

3. Sirdars, or other persons of high rank, may, at the discretion of the Court, present their evidence in the form of a letter, for the attestation of which they will send an authorized agent or representative, and for the substance of which they will be responsible, even as if they had deposed to it in Court. The Judge may also issue a Commission of two or more persons for taking the evidence of females of rank, or other individuals, who cannot appear in Court. A set of questions will be given to the persons thus commissioned, who will cause the deponent's answer to be taken on oath in writing, in the hearing of the opposite party in the cause, or his agent and of the Commission, and in the sight of, at least, one member of the Commission. The Commissioners having delivered the evidence to the Court will swear that it was really deposed to by the witness.

4. The Court can compel any person, whether party to the suit or not, to produce any book or document whatever that may contain matter relevant to the cause in hand. But if the document should be of a private nature, the Judge will first inspect it himself and ascertain its relevancy before filing it with the record.

5. In all suits regarding the right and interests in land, the Judge must call for any records which may exist in the Collectorate Offices regarding the subject-matter of the suit, and a duly attested extract, from the Village Record, must be filed with the proceedings, if a regular settlement have been made. If this obligatory precaution should have been neglected in any case, then the decision cannot be upheld on appeal till the defect has been amended, and the appellate authority will cause a rectification to be made accordingly. The Wajib-ul-urz or administration paper executed at the

time of settlement is valid evidence on all matters relative to village custom and the internal economy of estates and the mutual agreement of the co-partners, which shall not have been provided for by positive enactment.

6. An entry in the Settlement Records, if maintained by the superior Revenue authorities, constitutes a valid title to landed property. If any party object to such record, the Court will instruct him to file his objection before the Commissioner of the Division, and a reasonable time will be allowed for the disposal of such plea.

Section III.

HINDOO AND MAHOMEDAN LAW AND LEX LOCI.

1. The Hindoo and Mahomedan Codes, and the Lex Loci or local custom, or other system of law, obeyed by any tribe or sect, may be followed in all matters of civil right and social importance which are not opposed to morality, public policy, or positive law, and which may not have been provided for by any specific rule.

2. Those who belong to the Sikh persuasion are, in civil and secular affairs, generally bound by the Hindoo Law.

3. If the parties to a suit belong to different sects or different tribes, and if the law which they respectively observe should be conflicting with regard to the point in dispute, then the Judge, having considered the bearings of both laws on the particular case, will decide according to equity and reason.

4. In any of the matters described in the first clause of this Section, the Judge may place a definite issue before persons learned in the Native Law, and file their written opinion with the record. But if possible the Judge also will consult authorities, and form his own opinion. If the case should have been decided by arbitrators, the Court will observe whether their award is in accordance with law and custom.

5. Whenever it may appear that the Hindoo, Mahomedan, or other law, has been, in any district, superseded by local usage, and that both the parties would ordinarily be bound by custom rather than by law, the Court may ascertain the custom from competent and experienced persons, and decide according to it. Evidence regarding the existence and nature of the

custom must be filed with the proceedings, unless such custom be notorious, or have been affirmed in previous proceedings.

6. If one party should elect that the suit be decided by custom and the other by law, the Court will determine whether, in the particular case, the law or the custom has most authority. If there should be any doubt as to the prevalence of the custom, the law will be followed.

7. The laws and customs, as above described, should especially be observed in matters relating to inheritance, special property of females, marriage, divorce and adultery, adoption, wills, legacies, gifts, and partition. On the other hand, there are many matters in which their observance should be avoided, such as the prohibition of interest; civil disabilities on account of caste, religion, sex, disease, and other disqualification not allowed under British rule; rights connected with slavery; forfeiture of property, by reason of conversion to a religion, other than that in which the party may have been brought up; various periods of minority; absence of any law of limitation for suits, trial by ordeal, &c.

8. In all commercial transactions, not specially provided for, the usage of trade will be followed, and will be ascertained in the manner already prescribed in Clause 5 of this Section.

9. In the following Sections the leading principles of the Hindoo and Mahomedan Codes will be laid down, and their applicability to the practice of the Courts will be explained.

Section IV.

INHERITANCE.

1. There is no distinction between real, personal, ancestral, or acquired property, in the Hindoo and Mahomedan Laws of inheritance, although in the Hindoo Law such distinction is recognized in the disposition and distribution of property.

2. By the Hindoo Law the sons are first entitled to the inheritance, then the grand-son and great grand-son in the male line.

3. In default of these the widow or widows may inherit on a life tenure only; a virgin widow, whose husband may have died before completion of the marriage, can also inherit. After the widow's death the daughters and their

sons will inherit, provided that such succession be not opposed to local custom.

4. In default of these, the parents, first the mother, then the father, will succeed ; and after them the brothers or their issue, and after them the sisters and their issue.

5. It is not necessary to trace the succession further, especially as there is some uncertainty with regard to the remoter branches, and in such cases the Court can decide, either by legal analogy or with reference to custom.

6. It is, under all circumstances, doubtful whether a daughter can be allowed to succeed to her father's immoveable or ancestral property, in preference to his male relatives ; she might succeed if the property were moveable and acquired ; but if when debarred from the succession, she should be unmarried, then a portion must be reserved from the estate, sufficient to defray the expenses of her marriage.

7. If the father should have held a share with his brothers in a joint undivided property, the daughter will not succeed to the share before the father's brethren. Among many families, and especially among co-parcenary communities, there is a disposition to keep the succession in the male rather than in the female line ; and members without male issue are not allowed to adopt sons-in-law, as their heirs, from other villages, to the exclusion of their male relatives, against the wish of the brotherhood.

8. By the Mahomedan Law the primary distinction is between legal and residuary sharers. The legal sharers are those whose shares must first be separated off ; the residuaries may divide the remainder after the legal sharers have been satisfied. The legal sharers are the parents, the grand-father and grand-mother, the husband and wife, the brother, the sister, and the daugther ; the residuary sharers are chiefly the sons and their descendants : after these come the distant kindred.

9. Of the legal sharers above enumerated, there are some who do not receive their share under all circumstances. For instance, if the parents are surviving, the grand-father and grand-mother have no claim to a share, nor have brothers and sisters any claim when there are children. There are also some legal sharers, whose share differs according to circumstances. For instance, if there are no children, the legal share of a widow is one-fourth, of a parent one-third ; if there are children, the share of a widow is only one-eighth, and of a parent one-sixth.

10. The relative positions of legal and residuary sharers may be thus illustrated. If a man, an owner of property, die intestate, leaving a widow, a father, a mother, a daughter, legal sharers, and two or more sons, residuary sharers, then of the whole property the widow will take one-eighth, the father one-sixth, the mother one-sixth, and the daughter a variable share according to the number of sons (her share being half the amount which may be determined to be the share of a son); and these legal shares, having been first separated off, the remainder will be divided in equal shares among the sons. If a man die, leaving a widow only, and two or more sons, then the widow will take her eighth, and the remainder will be divided amongst the sons. If, again, a man die leaving only sons, and no widow, nor parents, nor daughter, then the sons will divide the entire estate. Thus the portion of legal sharers is determinate, while the portion of residuary sharers is indeterminate, and varies as the number of legal sharers may be greater or less.

11. When the sharers are numerous, the distribution will be effected by four kinds of numbers :—*first* "Mutamasil" or equal, *second* "Mutadakhil" or concordant, *third* "Mutawafiq" or composite, *fourth* "Mutabayun" or prime. The arithmetical details of such division are to be found in the "Seerajeeah," or Rule of Mahomedan inheritance.

12. The above rules of Mahomedan inheritance are ordinarily acknowledged by Sheeas as well as Soonees.

13. In some agricultural districts the usage, among Mahomedans, has superseded the law of inheritance, and has become nearly assimilated to the Hindoo system. Where such usage is defined, and certain, it will be followed in preference to the law.

14. By the Hindoo Law, the various heirs, according to their legal order, inherit successively; by the Mahomedan Law, they may inherit simultaneously. Under the latter system the inheritance may, at the same time, in part ascend lineally, and in part descend lineally.

15. Although by Hindoo Law the aged parents and the nearest female relatives, such as widow or sister, are not entitled (as by the Mahomedan Law) to specific and prior shares, yet they are, in all cases, entitled to maintenance from the heirs in possession of the inheritance, and if, after the father's death, the sons divide a joint inheritance equally, the widow, if there be one, may claim a share.

16. The performance of obsequies by Hindoo Law devolves on the heir of the deceased, but the discharge of this duty does not, *per se*, confer a right of succession.

17. In neither the Hindoo nor the Mahomedan Law is premogeniture admitted; the sons inherit equally. The doctrine of premogeniture may indeed find some support in the ancient Hindoo Law as regards a larger share being allowed to the elder son, but this principle is not admitted in the present age, except among independent Princes and Royal Families, and even then it would apply to the descent of the sovereignty (Raj) and not to the private property of the Prince.

18. Among village communities the inheritance is sometimes divided equally between the issue of each wife. The system is called "Choonda Vund" in the provincial dialect and "Putnee Bhaga" in legal phrase, and according to it, if a man left two sons by one wife, and one son by another wife, the two sons would receive one-half of the property and the one son the other half.

19. None of the disqualifications and disabilities declared in the Hindoo or Mahomedan Law, whether relating to physical, mental or moral infirmity, to sect or religion, to ceremonial defects, to degradation or expulsion from caste, will be allowed by the Courts to operate as grounds for exclusion from inheritance. No disability can have legal effect, unless it be specially declared and sanctioned by positive law.

20. When any member of a family voluntarily retires from the world, and enters a religious order, he loses all claim to his patrimony, and any property which he may subsequently acquire, will not be inherited by his blood relatives, but will belong to the institution to which he is attached.

21. The Courts will assume charge of property represented as heirless, or for which no claimant may be immediately apparent. The Judge will cause enquiries to be made, and may advertise for claimants. If heirs should be forthcoming, distribution and assignment will be made according to the rules of inheritance; if no heirs should be found, the property will lapse to the State.

22. Nothing in this Section can apply to families in which the order of succession may have been fixed by the Government.

Section V.

SPECIAL PROPERTY OF FEMALES.

1. By the Hindoo or Mahomedan Law, a married woman may possess distinct property of her own. The property of the wife does not necessarily vest by marriage in the husband. The wife has ordinarily the sole control over her *peculium.*

2. By the Mahomedan Law, whatever has been specially given or bequeathed to, or settled on, a female, whether married, or unmarried, is her sole property, which she may dispose of in the ordinary manner, and which will descend to her heirs in the usual routine of succession. But at the time of marriage it is competent for the bride, or her parents and guardians, to vest all her property in the husband, who would, on his part, usually agree to pay more than an equivalent in the shape of dower.

3. By the Hindoo Law the "Stridhun," or special property of females, admits of much detailed specification, for which indeed there is some necessity, inasmuch as the succession to such property is governed by peculiar rules. Of the numerous kinds of Stridhun some are doubtful and others do not possess the full legal attributes of such property.

4. The real Stridhun may be described as immoveable property given before marriage, or at the time of marriage, by the bridegroom, the parent, or other near relative; property which the female may acquire by her own skill, art, or industry; and property which she may acquire or amass from the proceeds of the Stridhun. Articles of ornament or attire, given by the husband after marriage, or acquired in any other manner, would ordinarily be included; provided that the husband himself made no claim to them. Over other kinds of property, especially immoveable, however acquired or inherited, the female would have control, acting under the general guidance of the husband or natural guardian, and at her death the inheritance would run in the ordinary course.

5. To the Stridhun, as above described, when left by an unmarried female, (sometimes called also "Kumareedhun,") the heirs are the brother, father, mother successively, and failing them, the paternal kinsmen. To the Stridhun left by a married woman, the daughters succeed, first the unmarried, then the married; after the daughters, the sons; and then the husband or his

family. But such property, having once descended according to the above rules, will thenceforth descend in the usual manner.

6. But among the Sikhs and Hindoos of this Province, it is doubtful whether the law regarding Stridhun is invariably or strictly observed. In many localities the sons do succeed in preference to the daughters, to the special property of their mother, and the husband regards his wife's property as merged in his own. The Courts will decide, when disputes regarding Stridhun may arise, whether the family in question ought to be bound by the Lex Loci, or by the strict provisions of the law.

7. In carrying out executions, the Court may, at its discretion, exempt the Stridhun, as above described, from liability for debts contracted by the husband, or guardian, for his sole and special benefit; provided that such property is *bonâ fide* held separately. But the Court will be cautious in admitting claims to such exemption. If the debt be for ordinary household expenditure, or for purposes in which the wife has a joint interest with the husband, then the exemption will be disallowed, especially where it is not rendered imperative by local custom.

8. In case of adultery, the woman, to whatever sect or class she may belong, will be liable to deprivation of her special property, which would then revert to her husband or children as the case may be.

Section VI.

MARRIAGE, DIVORCE, ADULTERY AND SEDUCTION.

1. By the Mahomedan Law, marriage is a civil contract, to be agreed to by parties of age and discretion. Minors may promise marriage with consent of their parents or guardians. Parents do usually promise on behalf of their children, and such engagements are treated as obligatory when the parties come of age, however doubtful such obligation may be according to the strict letter of the law.

2. By the Hindoo Law marriage is a sacrament, and may be solemnized by one of eight different forms. In this system also the principle of a contract by mutual agreement is sanctioned; but parents betroth their infant children, and confirm the betrothal by ceremonies, and such contract is binding on the parties when they come of age, if indeed,

they have not been already married during their childhood, as is usually the case.

3. By the Hindoo and Mahomedan Law, second marriages on the part of men are legal. They are also legal on the part of women by the Mahomedan Law, but they are not recognized by the Hindoo Law (though constantly contracted among the lower castes) : such marriages, when contracted, will be recognized by the Courts, and will not involve forfeiture of property, or any other civil disability. But the widow, on her re-marriage, cannot retain any property she may have inherited on a life tenure from her late husband. The right of marrying a widow cannot appertain to the brother, or other relative, of the deceased husband, but such a marriage is lawful if the widow give her consent. If the children, by her first husband, reside with her, after the second marriage, they have no claim to inherit the property of their step-father, but they would be entitled to maintenance.

4. In both the Hindoo and Mahomedan Law, there are prohibited degrees. Polygamy is sanctioned by the Mahomedan Law to a certain extent, and among the Hindoos it is customary.

5. By the Hindoo and Mahomedan Law, wives are, under all circumstances, except adultery, entitled to maintenance, and this right is claimable in a Civil Court.

6. A husband may bring an action for the custody of his wife, but the Court will not restore the wife against her will, unless assured of her good treatment.

7. In any class or sect, a marriage, otherwise unobjectionable, will not be set aside by the Courts, to the prejudice of the heirs, on account of an alleged informality, provided that the parties shall appear to have acted in good faith. Among Sikhs, what are known as " Chudur dalna," marriages are valid. By the Hindoo Law, among the lower castes, if an agreement shall have been made, and co-habitation ensued, marriage may be presumed, although the full religious ceremony may not have been performed.

8. By the Hindoo and Mahomedan Law, divorce is allowable, but, except in the event of adultery, the divorced wife has special claims on the husband. By the Hindoo Law, she may claim compensation up to one-third of the husband's property, and by Mahomedan Law she may claim the unpaid residue of her dowry.

9. By the Hindoo Law a pecuniary consideration may be legally received by the father of the bride. Such transactions, though not uncommon in practice, are, in their nature, mercenary, and are morally reprobated even by the Hindoo Law. They cannot prove the subject of a suit, and if a sum should have been promised by the bridegroom, the father-in-law cannot recover it by action.

10. By the Hindoo and Mahomedan Law the dower of a married woman, if not entirely paid up at the time of marriage, is claimable by her at any subsequent time, and especially in the event of divorce. Among Mahomedans it is usual, as a safeguard against capricious divorces, to stipulate for an amount of dower far beyond the means of the bridegroom to pay. Such contract, if enforced by a Court, would ruin a defendant, who had divorced his wife without reflecting on the liability to which he was subject. Still, although the full amount need not be decreed, yet, in the event of a divorce, without valid cause, heavy damages will be awarded to the wife, in proportion to the means of the husband.

11. At the husband's death the dower is treated as a debt, and takes precedence of the claims of heirs, but not of other debts : it stands on the same footing with them. In this case the Court would possess the modifying power of Clause 8, and award to the widow a fair sum with reference to the assets of the estate and circumstances of the heirs.

12. If in any tribe or sect a contract of betrothal shall have been entered into by parents on behalf of their children, which contract may be broken by either of the children when they arrive at years of discretion, then an action for damages will lie against the parent who has broken the contract, or whose child may have refused to ratify it ; so also if the marriage shall have been solemnized during the infancy of the parties, and shall not have been actually consummated, and if, in such case, either of the parties, on coming of age, may refuse to acknowledge the marriage, or may contract another marriage, then an action for damages will lie against both the child who violates the contract and the parent who made it. But heavier damages will be allowed in this case than in a breach of betrothal. In either case the action may be brought either by the aggrieved party, or by his or her parents, or jointly by both, and in either case larger damages will be assessed if the aggrieved party should be a female. The right of making contracts of the above nature will rest with the parents or

guardian. It will be explained hereafter to whom the guardianship ordinarily pertains. If the contract be made by proxy, the agent should, if possible, be furnished with written instructions.

13. In any case it will be competent for the defendant to adduce reasons for non-fulfilment of the contract of betrothal or of marriage, such as immorality or misconduct on the part of the plaintiff, physical defect, or incapacity, and the like; and the Court will decide whether these reasons are sufficient, either for mitigation of damages or for the dismissal of the suit; but the Judge will be cautious in admitting the validity of such reasons. In no case can the Court compel either party to complete the marriage against his or her will.

14. In the case of adults, breach of promise of marriage will be actionable, and damages may be decreed to the aggrieved party.

15. Any person who seduces an unmarried female, residing with her parents or guardian, may be cast with damages by the Court, at the suit of the parent or guardian. If the female should have been bethrothed, and if it appear that the marriage has been prevented by reason of the seduction, then heavy damages will be assessed.

16. If after the marriage has been consummated, and co-habitation ensued, either party should violate the vow, he or she will be liable to all the pains and penalties of adultery, both criminal and civil. If the defendant should have been already punished criminally, that fact will not bar a civil action. A duly authenticated copy of the judgment of the Criminal Court, produced by the plaintiff in a civil action, will constitute sufficient proof of the adultery, and the Judge will at once proceed to assess the damages, either with or without the aid of assessors.

17. Whenever a decree is issued with reference to a breach of contract, or to adultery, the plaintiff is entitled to indemnification for any expenses incurred in dower, gifts to relatives, or on other accounts, as well as to damages for injured feeling, and honor.

Section VII.

ADOPTION.

1. By the Hindoo Law any man, having no son born to him, may adopt one, who will subsequently perform those obsequies, which are considered

to be of such paramount religious importance. A widow may also adopt a son if she shall have received permission, verbal or written, from her husband, during his life-time, to do so. One son only can be adopted; but in the event of his death, a second adoption will be lawful. There are no prohibited degrees in adoption; on the contrary, if the adopted son be nearly related to the adopter, that is a favorable circumstance; and at all events, the parties concerned in the adoption must belong to the same caste. A father may not give away his only son in adoption, inasmuch as he would thereby leave himself without a son to perform his obsequies.

2. The son thus given, and adopted, acquires all the legal rights of a lawfully begotten son of the adopter; but he becomes separated from his natural parents, his relation to the giver ceases, and a relation to the adopter commences. He has, ordinarily, no claim to inherit property from his blood relations, nor have they any claim on his property. But if the natural parents should, after giving away a son in adoption, be bereft of their other sons, then the adopted son may become the heir of his natural parents as well as of his adopted parents, and may perform, with religious efficacy, the obsequies of both. If lawfully begotten sons should be born after the adoption, then they will share with the adopted son. By the Hindoo Law an adopted son may be disinherited for gross misconduct, but this doctrine must be applied with caution.

3. The proper age at which the child should be adopted is a disputed point among Hindoo jurists. If he be adopted as Dataca, or "given," (the most orthodox form,) the adoption should take place before he attains the age of five, or at the most of eight, years. If he be adopted as Kritrima, or "made," (a less authoritative form,) then no age whatever is fixed. The adopted son should be given to the adopter, but cannot be purchased by him.

4. The strict rules of the Hindoo Law of adoption, especially as regards age, are frequently disregarded in this Province. But such informality will not be held to vititate adoptions contracted *bonâ fide*. The main principles, however, as laid down in the Section, are entitled to observance.

5. Contracts relative to adoption are actionable in a Civil Court, but no particular deed or writing is requisite in the formularies of adoption.

6. By the Mahomedan Law no special formularies, or legal consequences, are attached to adoption. The adopted son has no peculiar rights,

except such as the adopter may confer on him; but by becoming naturalized in another family, he does not forfeit inheritance in his own.

7. Nothing in this Section can apply to families where adoption may have been declared void, as regards the succession to public grants or to feudal privileges, distinct in their nature from private rights.

Section VIII.

MINORITY, PARENTAL AUTHORITY AND BASTARDY.

1. The period of legal minority, for persons of all tribes and classes, and of both sexes, will extend to the age of eighteen years.

2. If the guardianship of the person or property of a minor shall have been fixed by private arrangement, testamentary or otherwise, the Court will not interfere, unless there should appear special grounds for interference, such as the proof or the apprehension of fraud, injustice or injury to the minor's person or property.

3. Where no previous arrangement shall have been made, the Courts may appoint guardians and managers. But if the minor be a landed proprietor, the appointment rests not with the Court, but with the Revenue authorities. Managers and guardians appointed by the Courts are responsible to them. In making such appointments, the Court will be guided by the following Rules:—

4. By the Hindoo and Mahomedan Law, the guardianship of the person and property of a minor devolves successively on those parties who are nearest of kin according to the rules of inheritance, that is to say, first the mother, then the paternal and the maternal male relatives in order. As regards the property, however, the mother would be expected to act in concert with some male relative; but this principle need not always be carried into effect.

5. Guardianship is of two descriptions—*first*, the protection of the minor's person, his maintenance and tuition; *second*, the management and custody of his property. These two charges may be reposed in the same person or in different persons.

6. The guardianship of the person should not be entrusted to the next heir of the minor, or to any other person who may have an interest in

outliving him. With this restriction, however, it is not only permissible, but desirable, that the charge should be entrusted to some near relative who may take a natural interest in it.

7. Neither is the management of property to be committed to the next heir; but the duty does not necessarily belong to one of the relatives of the minor. It may happen that the person who is the best qualified for the guardianship of the person, such as a mother or sister, is the worst qualified for the management of the property. The services of the most capable person, whether related or not related to the minor, will be sought for.

8. The guardians and managers are responsible for ordinary care and diligence in the performance of their duties. They cannot ordinarily bind their wards by contracts, nor can they exercise ownership over the property; but where they have so acted under manifest necessity, as for the support of the minor, the liquidation of debts, the preservation of the property, or the payment of taxes, the ward, when he comes of age, is bound by their acts.

9. A minor is not competent, *sui juris*, to enter into any engagement or transaction not manifestly for his benefit, except with consent of his guardian.

10. A father or guardian is legally entitled to the guardianship of a child or ward, in the fullest sense of the word, that is, to the superintendence not only of its physical nurture, but also of its mental and moral training. Any child or ward in state of pupilage, who may desert its home, or refuse to obey the reasonable commands of its parent or guardian, can be compelled, by order of the Court, to return and to yield obedience; but such order will be withheld by the Court, if it should appear that the child had been subjected to any cruelty or gross mal-treatment; so also if the child may have taken up its abode with, or have been detained by, any party, the parent or guardian may bring a suit against that party for the custody of the child, provided that it shall be competent for the defendant to show, if he can, valid cause why the child should not be committed to its natural protector.

11. The "state of pupilage" mentioned in the preceding clause will ordinarily extend to the period of minority, that is, to the eighteenth year. But if it shall appear to the Court, that the child, although a legal minor, is nevertheless of mature and competent understanding, and a free moral agent, then he or she is at liberty to make an election with regard to place of abode,

mode of life, or religious persuasion, notwithstanding opposition on the part of the parent or guardian. And the Court will disallow the claim of such parent or guardian to custody, provided always that the course contemplated by the child is not contrary to morality, policy or law. But nothing in this clause can apply to girls who may have been married. The Courts will be cautious in allowing females, under any circumstances, to exercise the liberty herein granted, inasmuch as such liberty is liable to abuse.

12. A child under legal age may acquire property independently of the parents or guardians, over which they have no control further than that which reasonably pertains to the office of protector. On the other hand, the control of the child will be limited by the legal incompetency which attaches to minors.

13. Parental authority, whether in regard to the person or property of the child, ceases after the term of legal minority. Any authority of this nature, which may be found in the Hindoo or Mahomedan Law, must be regarded as a moral or religious precept, but not as a legal obligation.

14. By the Hindoo and Mahomedan Law the duty of maintenance, protection and support is mutually absolute between parent and child, and will be enforced by the Court.

15. In the Mahomedan Law there is a strong disinclination to bastardize issue. By the Mahomedan Law affiliation, on the part of the putative father, is sufficient to legitimatize, and a marriage between the parents of such offspring is presumed, whenever a valid ground can be found for such presumption. The Courts therefore should be cautious in admitting proof of illegitimacy, where the parents may appear to have acted *bonâ fide*, and where no fraud or immorality may be suspected.

16. A similar tendency is to be found in the original Hindoo Law. Of the eight forms of marriage, several are lax and vague. On failure of direct issue, vicarious and subsidiary sons were allowed of twelve or even more descriptions, irrespectively of sons formally adopted. Male Brahmins were permitted to intermarry with any of the inferior castes, except the Sudras; provided that no female Brahmin should accept a husband from a tribe lower than her own. Among the Sudras co-habitation between the parents, without formal marriage, was sufficient to legalize the issue for all practical intents and purposes; but during the present age this laxity has in a great measure disappeared, at least among the higher castes. The looser forms

of marriage have fallen into desuetude and the more regular forms are adhered to. There are now only two kinds of sons recognized by the Hindoo Law, the "Aurasa" or son lawfully begotten and the "Data" or son lawfully adopted. Brahmins may not intermarry with other tribes. But among the lower castes the original laxity still prevails, both as regards the solemnization of marriage and the admission of the children to all the rights and privileges pertaining to legitimate issue. Among the higher castes, therefore, questions of illegitimacy may reasonably arise, and will be entertained by the Courts; among the lower castes they can hardly be raised, especially if local custom should concur with the law in admitting bastards to inheritance.

17. Whenever illegitimacy is declared, proved or admitted in a legal and practical sense, the bastard may acquire, but may not inherit property. Such issue, however, though debarred from sharing in the patrimony, are, together with the mother, entitled to adequate maintenance from the father, which may be awarded by the Civil Court, unless it should have been already fixed by the Criminal authorities.

18. The provisions laid down in Clauses 10 and 11 of this Section will be equally applicable to illegimate as to legitimate children. By the Hindoo and Mahomedan Law a wife can have control over the children only with the sanction of the husband, and has no authority whatever in opposition to him; but the mother of illegitimate children, and her relatives in succession to her, are frequently considered to have a preferential claim, over the father, to their management and education. There is, however, room for doubt, whether this principle is supported by the fundamental laws of either sect, and at all events it will not be carried out to its full consequences by the Courts.

19. If the father do not claim the guardianship of the illegitimate child, then it may be committed to the charge of the mother; but if he do claim the guardianship, and if the Court have reason to consider that the physical welfare, the moral education, and social prospects of the child can be best cared for by the father, or his relations, then the guardianship will be entrusted to the father and his relatives in preference to the mother and her relatives. In no case will the Courts consign such offspring to the inferior keeping of the mother, when the father is both anxious and able to make better arrangements.

20. A parent has no power or right under any circumstances to effect a sale or any bargain of that nature, directly or indirectly, with regard to a child, whether legitimate or illegitimate; and the Courts cannot give any support or recognition to claims connected with such transactions or proceedings.

Section IX.

PARTITIONS AND DISPOSITION OF PROPERTY.

1. Dispositions of property in their various forms, such as partitions, gifts, wills, sales, will be treated of in the following Sections. The power of making these dispositions is, under some circumstances, more or less restricted. The extent to which these general restrictions are to be maintained by the Courts, both for Hindoos and Mahomedans, will now be stated at the outset. The special restrictions regarding pre-emption will be described in the Section on Sales.

2. In the Mahomedan Law, there are no restrictions on dispositions of property other than testamentary; but the power of a proprietor to act in this respect, regardless of his family, will be limited by any local custom which may be proved or known to prevail. It is probable that capricious alienations, in favor of one heir to the prejudice of the rest, or in favor of a stranger to the exclusion of relatives, will not be approved of by public opinion in any locality.

3. Hindoo property admits of a two-fold classification, ancestral and acquired, personal and real. It is on all hands admitted that the distributor has more power over acquired, than ancestral, property, and over personal than real. It is, however, certain that he *must* distribute real ancestral property according to the rules of inheritance; whether he has any option with regard to ancestral personal property is doubtful. Again, it is certain that he may distribute, or dispose of, acquired personal property as he pleases; whether he has the same option with regard to real acquired property is questionable. At the same time the Hindoo Law permits the proprietor, under the pressure of necessity, such as the liquidation of urgent debts and the preservation of the family credit, to transfer his property of whatever description.

4. In ordinary cases, then, the Courts will bear in mind the several degrees of restriction noted in the preceding clause. But alienations, even of ancestral property, without reference to the heirs, if made, for really cogent reasons, will be recognized, while unreasonable alienations will not be maintained, if objected to, by the aggrieved parties, within the legal period.

5. By both Hindoo and Mahomedan Law the regular partition of joint undivided property is recognized, and each co-partner has a right to demand that his legal share be divided off to him ; the Courts will enforce this principle ; and unless special reason should be shown, no individual sharer can resist the partition, nor can the majority object to the claim of an individual sharer to division.

6. By the Mahomedan Law the proprietor may distribute in any manner he pleases ; but the distribution will be subject to any restriction imposed by local custom, as already prescribed.

7. Among Hindoos it is not unusual for the father, or other incumbent, to distribute his property, during his own life-time, among his heirs, and such distributions stand in the place of testamentary dispositions ; but he cannot be compelled to distribute against his will. In the event, however, of his wishing to make a distribution, he is subject to certain legal restrictions in the mode of doing so.

8. In the first place, he ought to refrain from distributing, as long as there is any prospect of future children being born to him ; and if after distribution, there should be any more children born, he must either provide for them out of the shares he may have reserved for himself, or if necessary, he may cancel the first distribution, and re-distribute in such a manner that no heir shall be excluded.

9. According to the custom of inheritance, the distribution will be primarily made in favor of the sons ; but the father may reserve two or more shares for himself. As the widow can demand to share with her sons, after the husband's death, so it may be presumed, that she can claim a share, if the distribution should take place during his life-time. But if she be possessed of Stridhun, from which an income is derivable, the amount of such property may be deducted from her share. A small portion might also be assigned, as a matter of favor rather than of right, to the unmarried daughters ; but the father may provide for his wives and daughters out of

the shares reserved to himself, and in such case he need not make any specific allotment to them.

10. If one of the partners effect an improvement in the joint undivided property, or make an acquisition by means of the common stock, he must share it with the other partners, but the acquirer or improver is entitled to a double share.

11. No certain criterion can be given by which joint may be distinguished from separate property; the Court can discriminate in each case; but when relatives live together, community of property may be presumed, unless reason be shown to the contrary.

12. If the property to be divided be not land, the Court may effect the partition through its own officers, or through an officer specially appointed for the purpose; but if it be land, the partition should be referred, by precept, to the Revenue Authorities, who, having effected the partition according to the rules of the fiscal department, will report the same to the Court. If, however, any of the parties be dissatisfied with the distribution, he must represent his objections to the Revenue Officer, and not to the Court, as the Judge will not be competent to interfere or set aside the partition; and if, after hearing all objections, or after the expiry of the term, within which they can be made, the Revenue Officer shall decide on upholding the partition, it will be accepted as final by the Court.

Section X.

GIFTS.

1. By the Mahomedan Law a gift must not be conditional, nor implied, nor indefinite, and must, as a general rule, be accompanied by delivery of possession. This strictness is not alien to the Hindoo Law, and the above rules, regarding the defined nature of a gift, will be enforced by the Courts in all cases of gift whatever. A gift may be either verbal or written.

2. By the Mahomedan Law the donor can revoke the gift under all circumstances, except those which would render revocation almost impossible; but by the Hindoo Law a gift is only revocable under circumstances which would neutralize any contract whatever. Laxity of revocation will not be sanctioned by the Courts. A gift properly made, and followed by

delivery, cannot be re-called; but it may be invalidated by those causes which would render any contract or transaction voidable, or by the failure of the conditions mentioned in the preceding clause.

3. By the Hindoo Law there exist the same restrictions on the power of making gifts, as with regard to all other dispositions of property; but no restriction exists in the Mahomedan Law as regards gifts, unless the gift be made on a death-bed, in which case it is treated as a legacy, and is then subject to the usual testamentary limitations. For instance, a man cannot, by Mahomedan Law, *will* away from his heirs more than one-third of his property, but he can, in his life-time, *give* away his entire property, or as much of it as he pleases, to a stranger, or to one heir in preference to the others; but it will be remembered that a deed of such gift must be accompanied by possession. If the deed be produced after the donor's death, it will not be held valid, unless there should have been delivery during his life-time. Such gifts are also subject to the conditions already described in Section IX. Clause 2.

Section XI.

WILLS AND LEGACIES.

1. Wills or testaments, and legacies, in the legal sense of the terms, are unknown to the Hindoo Law. Such dispositions of property either take the shape of partition with, or gift to, one or more of the heirs, during the life-time of the father or the incumbent, and are treated of in their appropriate Sections. If, however, a deed, purporting to be a will, shall have been executed by any Hindoo, it may be permitted to take effect, provided that it does not militate against the rules of inheritance and does not transgress the general limits imposed on the disposition of property.

2. By Mahomedan Law a proprietor may bequeath one-third of his property, but not more, except with the consent of the heirs; legacies up to this amount are payable after the debts of the estate, but they precede the distribution of inherited shares. A legacy cannot be left to one of the heirs without the consent of the rest. Gifts made on a death-bed are treated as legacies and are subjected to the same restrictions. No legal preference is shown to written over nuncupative wills, but

verbal bequeathments give rise to unsatisfactory litigation, and the practice should be discouraged by the Courts.

Section XII.

CONTRACTS.

1. CONTRACTS are invalid, if they militate against positive law, morality, or public policy.

2. If either party should have been incapable of exercising his judgment, or his will, from lunacy, insanity, drunkenness, tender age, force, fraud, error, intimidation, duresse, or sickness; or wherever it may be proved that one of the contracting parties has acted *mala fide*.

3. But when contracts have been entered into, *bonâ fide*, with infants, lunatics, or others suffering from natural infirmity, for the necessaries of life, they may be held valid, if it shall appear that no unfair advantage has been taken of the infirmity under which one of the parties labored. Under such circumstances, contracts entered into by minors or infants, for necessaries of life, may be binding on the parents; and similar contracts, entered into by aged persons, widows, and females, whose maintenance is, by law chargeable to some male relative, may be obligatory on such relative; or if made by a guardian on behalf of his ward, they are dischargeable by the minor when he comes of age.

4. Contracts made by married women require the consent of the husband, and they are not valid, unless it should appear that the consent could not possibly have been obtained, or if sought, could not have been reasonably withheld. If the husband is laboring under any physical or civil disability; or if he should have delegated to the wife the management of his affairs; or if he should have authorized her to conduct any transaction, or to carry on any business, or if he should have deserted her, or have separated from her; or if the subject-matter of the contract be for necessary articles of maintenance, such contracts may be valid; but as regards property, which is, in a legal sense, her peculium, a wife may engage in transactions independently of her husband.

5. If a contract be partly valid and partly invalid, the valid portion may be enforced; and if the nature of the contract admits of an

apportionment of consideration between the parties, then a part performance on one side will warrant a proportionable amount of performance on the other side.

6. The validity of contracts entered into, *bonâ fide*, will not be affected by the adequacy, or otherwise, of the consideration. Nevertheless, this circumstance may greatly affect the credibility or otherwise of a disputed contract; and if the genuineness of such contract be doubted, the consideration and reasons for making it must be enquired into.

7. A contract may be drawn up in any form, that is, with or without seal, stamp, attestation, registration, or any other formality: it may even be verbal. The Court will enquire into the reality of the contract and the intention of the parties; but the credibility of the transaction may be affected by the form of the contract. If there should be any doubt as to the intention, then evidence, parole or documentary, may be taken in explanation thereof; and if the contract relate to trade, or to any other special class of transactions, it may be interpreted according to the usage of similiar cases.

8. The fact of a breach of a contract having been already punished in a Criminal Court, under the provisions of Regulation VII. of 1819, will not bar any civil action which may be brought relative to that same contract.

9. Contracts are ordinarily governed by the local law or custom of the place where they were executed; and the *lex loci contractus* will aid the Court in discerning the probable intent of the contracting parties.

Section XIII.

SALES.

1. Written contracts of sale will be treated in the same manner as all other contracts. Negotiations for sale may be conducted by letter; either party may recede at any time before acceptance shall have been given; but there can be no retractation after the time when the letter of acceptance shall have been posted.

2. A merely verbal contract of sale, not followed by any act, writing, or proceeding, cannot be enforced by the Courts; but it may be enforced, if any act of ratification shall have ensued, such as delivery of the goods, in whole or in part; payment of the price, in whole or in part; the setting of

the goods apart, the payment of an earnest, or an acceptance of any kind. After such partial ratification, neither party can recede, nor can the seller re-sell the goods.

3. Until either the price shall have been paid, or delivery made of the goods, an absolute transfer of the property has not been effected, and, consequently, any loss or injury of the property, which may occur, will be at the cost of the seller. After the price has been paid, or delivery made, any loss or injury which may occur will be at the buyer's responsibility. If after the sale has been completed and the price paid, the property should be left with the seller, even then the buyer is responsible for loss or injury.

4. Delivery may be either *actual* or *constructive*. Actual delivery to the buyer does not need further specification. All other deliveries will be considered constructive. Delivery to an agent of the buyer is valid, but not if made to an agent of the seller; so also delivery to a common carrier, or to a boatman, or to any other carrier at the buyer's request, consignment to any person, or location in any place by the buyer's direction, is tantamount to delivery; so also the delivery of the key of a godown, or any symbolical act of that nature, may be construed as delivery of the goods. In all cases of constructive delivery, the seller is responsible for ordinary care and diligence in the procuring of good carriage and in effecting good arrangements.

5. The seller has a lien on the goods, (if they should not have been delivered,) until the full price has been paid, unless some particular date for payment shall have been fixed: in which case the seller will be considered to have waived his lien. The lien alo exists up to the date of delivery, and even if the goods having passed out of the seller's hands by delivery should be in transit to the buyer; still the seller may stop them if the price should not be paid, or if there should be reason to believe that, from the insolvency of the buyer, or other cause, it will not be paid; but this right of stoppage and seizure ceases from the moment that the goods come into the possession of the buyer, and from that time the seller's lien is extinct.

6. If the price should have been fixed or agreed upon in writing, then that amount will be decreed; but if the agreement shall have been only verbal, then, upon such proof, an exorbitant price will not be decreed. The Court will, in its discretion, cause a reasonable price to be fixed.

7. If property be purchased "*in market overt,*" that is, in a bazaar, open shop, frequented place, public sale or auction, then a defective ownership in the seller will not affect or invalidate the title of a *bonâ fide* purchaser who had paid the full price. The original owner cannot recover from the purchaser, though he may have his remedy against the seller; but if the property should have been purchased by private sale, not in market overt, then the purchaser cannot acquire a valid title from a seller who had not ownership; and the rightful owner can recover such property from the purchaser, who may then obtain what redress he can from the vendor.

8. A warranty of freedom from concealed defect and blemish is implied in every private contract of sale, where the purchaser may not have specially agreed to take the article with all it faults. If after the purchase, the purchaser should discover such defect, he may, within twenty-four hours, return the article and claim a refund of the purchase-money, provided that he shall not, in any way, have injured it, or made beneficial use of it. The term of twenty-four hours mentioned above may, at the Court's discretion, be extended to a further period, not exceeding one week, but nothing in this clause will apply to purchases made at public sales or auctions. Such purchases cannot be annulled on subsequent discovery of defect.

9. If property may have been recorded in the name of a relative of the real owner, by an agreement of the parties, this circumstance will not prevent the owner from disposing of it; so also proprietors cannot, by entering their property in the names of relatives and others, preserve it from liability for debt. On the proof of such collusion, the property may be exposed for sale, or converted into any other means of discharging the owner's liabilities; but this clause is not intended, in any wise, to weaken the authority of the public records of landed property.

10. In the sale of real or ancestral property, the restrictions mentioned in Section IX. must be observed.

11. The right of pre-emption is declared to exist in communities of land-holders, however constituted, under whatever tenure the estate may be held. Whenever any member of such community is desirous of selling or permanently transferring his share, he must offer it to the community at large, or to individual co-partners. If there should be any hereditary cultivators on the estate, the right of pre-emption will appertain to them next after the proprietory shares. If the price be not agreed upon privately

among the parties, it must be referred to the Revenue Authorities, who will cause it to be fixed by a Valuation Committee. If the community, or members thereof, be not willing to accept terms thus determined, the intending seller may dispose of the property in any manner he pleases; but if he have effected a sale without offering an opportunity of pre-emption, then the community, or any member of it, may, within three months from the date of the transaction, bring a suit for rescinding the sale. The same rules will pertain to the foreclosure of mortgages, and to sales in execution of decrees. If there should be contending claimants for the pre-emption, the Court will call upon the Revenue Authorities to determine the preference. The Court will not undertake the determination of the price, but will apply to the Revenue Authorities for that purpose. But the principle of pre-emption is not applicable to simple or collateral mortgages, hypothecation, pledge, leases or other temporary transfers. In villages and qusbehs, the site and ground, occupied by the sharer in the estate, will be subject to the right of pre-emption as above described; if the intending seller be a non-proprietory resident, the pre-emption pertains to the land-holding community. In the two last cases also, the price, and the priority between claimants, will be determined by the Revenue Authorities.

12. If a sharer in any joint undivided property, not land, be desirous of permanently transferring his share, the right of pre-emption will pertain to the co-sharers, and may be enforced by the Courts. If in any town, city or village, or in any mohulla, ward, or sub-division thereof, the custom of pre-emption may be known to prevail, it may be enforced under the same rules as in the co-parcenary communities. The Court will fix the price with the aid of a Valuation Committee, composed of three arbitrators, two appointed by the parties (one by each) and one by the Court. The preferential right between contending claimants will be determined by the Court, with reference to vicinity, relationship, or the merits of the case.

Section XIV.

MORTGAGES.

1. In the event of a simple mortgage, where the mortgagee enjoys the proceeds of the property in payment of a debt, the mortgager is,

ordinarily, at liberty to redeem the property, when the amount of the debt with interest shall have been liquidated, either by a cash payment, or by the usufructuary profits of the mortgagee; but the mortgage may continue to hold and enjoy the property until the obligation is discharged. The above rule, however, will only take effect in the event of the particular mortgage being unaccompanied by any special agreement between the parties, or in the event of transactions of this nature not being regulated by any local custom. If, for instance, the parties should have agreed that the usufruct is not to affect either the principal or the interest, or that it is to be regarded only as payment of interest, or if such should be the ordinary conditions of a mortgage by the known custom of that vicinity, then the Court will decide accordingly.

2. If the property shall not have been delivered to, or placed in, the possession of, the mortgagee, but mere hypothecated as collateral security for the debt, the mortgager may cancel the pledge by payment; but in the event of non-payment, the mortgagee may bring an action for recovery of the loan, and, having obtained a decree, may proceed against the property on which he has a lien.

3. If the mortgage should have been a conditional sale, to be converted into an absolute sale if the debt should not be paid according to the terms stipulated, the mortgagee may bring a suit for the foreclosure, but he is not allowed to treat the property as irrevocably transferred to him until a reference has been made to the Court, in order that due notice may be given to the mortgager, and to other parties who may have objections to offer; and the terms of grace, granted according to the rules of procedure, may be allowed.

4. The statute of limitations will not apply to mortgages, that is, the right of redemption or foreclosure, on the part of the original parties to the mortgage, their heirs or assigns, will not be barred by lapse of time.

Section XV.

AGENCY.

1. Agency may be general or special. In general agencies, the principal cannot give private instructions to the agent contrary to any public authority which he may have given to him, otherwise third parties

would be defrauded. For instance, if an agent be publicly notified to have a general authority to sell certain kinds of effects with warrant, but have *private* instructions, in a particular case, not to warrant, and if in violation of those private instructions he do warrant, the principal is bound by that warranty; so again, if an agent be ostensibly deputed, without any special limitation, to trade in a certain line, and have private instructions limiting his transactions, then if he transgress the limits, still the principal will be responsible to the parties with whom the agent may have dealt.

2. In special agencies, for the performance of a particular business, the principal is responsible for these acts of the agent which may be connected with the "*res gestæ*," and with the execution of the duty, and for the accessory circumstances arising from the conduct of the transaction.

3. While the principal is responsible to the public for his agent, the agent is responsible to his principal, for ordinary skill, care, and diligence. The agent may be responsible for commercial acts, done in good faith perhaps, but still in contravention of the notorious usage of trade.

4. But if the acts of the agent should have been improper and unauthorized, still they may become binding on the principal, if he should in any way have ratified them subsequently.

5. In matters connected with the agency, any promises or agreements made with the agent may be enforced by the principal; so also agreements may be enforced by the agent on behalf of the firm if he be entrusted with the requisite authority.

6. A married woman may be the agent of her husband.

7. In commercial affairs the principal is bound not only to furnish his agent with efficient instructions, but also to make the agent's powers and position known as publicly as possible, and to notify the same to those with whom he habitually deals, especially when the agent is deputed to act at a distance, so that third parties may not be induced to trust the agent improperly, or to extend transactions with him to undue limits. On the other hand, the public are bound to ascertain the powers and position of agents, and to examine the credentials with which they are usually supplied. Those who neglect these precautions may thereby subject themselves to liability.

8. The usual powers of agents and gomashtas in mercantile houses will be more specifically described in Clauses 7 and 8 Section XVII. on "Patnership."

Section XVI.

BAILMENT.

In "Bailment" are included deposit, commission, borrowing, hiring, pledge, or pawn.

1. The leading principle connected with this subject relates to the custody of the property, and to the relative degrees of responsibility incurred by the parties to the several kinds of contract above enumerated.

2. The consideration which governs questions arising out of these cases is, whether the two parties receive mutual benefit from the transaction, or whether any one of them receives greater benefit than the other; and, according to the degree of benefit, is the degree of care and diligence demandable from the party, and the degree of negligence for which he is responsible. In some cases the party in charge of the propety is responsible for ordinary care, in others for more, and again, in others, for less than ordinary care.

3. Thus, in deposit, when property is deposited without consideration, for the sole benefit of the depositor, then the risk is chiefly incurred by him, and the depository will be liable only, when he may be convicted of fraud, or of gross neglect; but if the depository has officially undertaken the charge, and induced the depositor to confide in him when perhaps better custody was obtainable, then he incurs a greater responsibility than in the last case.

4. On the other hand, in borrowing without any consideration to the lender, and for the sole benefit of the borrower, then the latter becomes responsible even for slight neglect. He is bound to be more circumspect than a depository and must take more than ordinary care.

5. When, however, the transaction is for the mutual benefit of the parties, as in hiring, and in commission, when goods are deposited on consideration, or are entrusted for carriage, or conveyance, or manufacture, then the party in charge is responsible for gross neglect. If he shall have used the article in a customary and reasonable manner, or if he shall have taken ordinary care in the conveyance, or in the manufacture, then the owner must bear any loss that may accrue.

6. To a certain extent, the same principle applies to pawn and pledge, inasmuch as each party receives benefit, the pawner credit, the pawnee

security. The debt need not necessarily be extinguished *in toto* by the loss of the pledge, if the pawnee shall have guarded it with vigilance and precaution. On the other hand, the pawner, on the loss of pledge, cannot ordinarily be compelled to pay a debt for which he had already given satisfaction. The pawnee will, in the first instance, be chargeable with the loss. The Court will, in its discretion, decide whether any portion of the loss should, under the circumstances of the case, be borne by the pawner. If there should not appear special considerations in favor of the pawnee, then the whole loss must be borne by him ; and in order that fraud on the part of the pawnee may be prevented, it will be understood that when a pledge is stolen or otherwise lost from his custody, the *onus probandi* will rest with him to show that he had adopted every reasonable precaution. The pawnee cannot sell or dispose of the pledge for the satisfaction of the debt, or for any other purpose, without bringing a suit.

Section XVII.

PARTNERSHIP.

1. A PARTNERSHIP may be formed by two or more persons, whether relatives or not, for any lawful purpose whatever.

2. Partnership may be created by deed, by parole, or by tacit consent, and parties may make themselves liable, as partners, by their own declaration or by participation in the profits. Any person who participates, directly or indirectly, in the net profits, may be held liable as a partner, whether he be a recorded and ostensible partner, or not. It is impossible to lay down any defined rules as to what constitutes participation in profits. If such a question should arise, the Court must decide it according to the circumstances of the case.

3. Partners may be of various kinds. There may be managing partners (gerant); recorded partners, dormant; and commandite partners, who furnish funds and capital for the purposes of the partnership, and receive a share in the profits, but who do not take any part in the management of its affairs. Managers and gomashtas, who may not have contributed any stock or capital to the concern, and have no share in the partnership property, may yet enjoy a share of the profit in consideration of their services, and can be made responsible in proportion to the amount they have received.

The liability of all partners, of whatsoever class, is of the same nature, though it may be different in degree. Nothing in this clause can apply to those who have supplied capital to a partnership as a loan on interest. If the lender shall only have received interest, and not a share in the profits, then he cannot be made liable as a partner.

4. Partners are free to limit their liability to each other, but they are not so free to limit their liability to the public. Their agreements are binding on them, in their relations with each other, in the adjustment of profit and loss, and in the management of the concern. But unless such agreements should have been notified for general information, and really made known, they will not necessarily bind the public, dealers, or others, in proceedings instituted against the firm or the individual members of it. If such agreements should be contrary to what has been held out by the firm, or to what the public has had reason to understand to be the constitution of the partnership, they will be absolutely inoperative as regards those who may have dealt with the firm. Thus, if one out of two partners has been apparently a half-sharer, and has allowed the public to suppose him to be such, while in reality his share was much less than a half, then he will be liable for a half share in the debts of the firm, and *not* for the smaller share; and those who have dealt with the firm may sue him accordingly, inasmuch as they are presumed to have trusted the firm on the supposition that he was a half-sharer.

5. It is the positive duty of partners to notify the general terms of their partnership to the public at large, to those who deal with them, and to the choudrees of their bazaar, or of their trade. It is necessary that they should keep their books in a regular and explicit form. By the neglect of such precautions they subject themselves to aggravated responsibility. On the other hand, it is the duty of dealers to make themselves informed of the constitution of the firms with which they deal. If a dealer trust a firm, on the supposition that each partner holds equal shares, although it has been publicly notified that the shares are unequal, then he cannot sue them on this understanding—he must sue them according to the recorded shares. Any loss he may suffer hereby would be the consequence of his own negligence.

6. Partnership assets may consist of property, real or personal, ancestral or acquired; of paper money; of unrealized debts and obligations. Such property is distinct from the private property of individual partners.

But in many partnerships the partners are relatives and reside together, or they draw on the general funds for their private expenses. In such cases it will be difficult to distinguish between common and private property, and the Court must take care that the distinction is not made use of for the purposes of fraud or collusion.

7. The power of the managing partner, or of other individual partners, to bind the firm, may be limited, but such limitation must be made publicly known, otherwise the acts of the partners will be effective, as regards dealers and others, even as if there had been no limitation. As a general rule, each partner may act as an agent for the firm, in the transaction of that business for which the partnership was created, and his proceedings, in that capacity, will bind the whole firm. He *may* purchase or dispose of stock in trade for the reasonable ends of the partnership; he *may* enter into speculations; make bargains and contracts; draw, accept and endorse bills of exchange; pay the debts of the partnership; grant promissory notes; or dispose of the moveable property of the firm. With certain exceptions, he may do whatever might be done by the whole firm in their particular line of business. But if his acts exceed this limit, he becomes singly responsible. It is impossible to determine, beforehand, what acts do, or do not, fall within the province of the particular partnership, or belong to its legitimate business, or be reasonably supposed by the dealers and the public to be a partnership concern. The Court must, in its discretion, construe the ordinary authority of a partner.

8. But there are certain things which a partner may *not* do on behalf of the firm without express written authority. He may *not* purchase, transfer or dispose of real property; he may *not* take a lease or farm of a landed estate, a ferry, a tax, or any public collection; he *cannot* institute, conduct, defend or compromise a civil suit; he *cannot* submit a question to arbitration; but he *may* do all these things *if he produce a power of attorney* on the part of the firm. If he act in these matters without such authority, the firm is not bound, though he will be bound personally. In such affairs, the especial consent, by signature, of all the partners, is required. The above rules, regarding the ordinary and special powers of individual partners, will generally apply to gomashtas or agents.

9. If any firm or company should be subject to any special liabilities through its own acts, or be vested with any special privilege or corporate

capacity by public authority, the Courts will give effect thereto. As a general rule each partner is responsible according to his share or interest in the firm. By the mercantile custom of this province, partners are not jointly and severally responsible for the whole debts of the firm, except in the cases hereafter mentioned. They are ordinarily reponsible for their full shares. But the Courts will freely exercise their discretion in compelling a rich partner to pay more than his actual share, if it shall appear that this share was not publicly notified, and that the creditors had trusted the firm on the reasonable supposition that he owned a greater share. If there should have been a positive stipulation for joint responsibility, the firm are collectively and individually bound by that agreement. Also, if the partners be brothers or relatives residing together, and subsisting and trading on joint undivided property, whether inherited or acquired, then each and all may be made responsible for the debts of the whole firm. But if any one of the parties should have acquired, by his own means and exertions, property separate from the joint property, then this separate property will be governed by the ordinary rules of responsibility.

10. If some of the partners should be managers and others dormant, then the creditors must sue the managing partners, whom they trusted, for the whole debt; and not the unknown dormant partners, who had never been trusted. But in such a case, the dormant would be responsible to the managing partners. If, however, the creditor having sued the managing partners, cannot recover from them, then he may sue the dormant partners. The same rules will apply to cases, where gomashtas, who, though not ostensible partners, may have enjoyed a share in the profits as remuneration for their services. The partner will be sued in the first instance, and if the creditor cannot recover from him, then the gomashta may be sued for the amount he received from the concern.

11. If one partner bring a suit against another, the Court will order a general adjustment of accounts between the parties; suits for single items will not be heard, otherwise litigation would be protracted.

12. The same principles, as those described in Clause 9, will apply to liabilities for debts jointly contracted, to securities jointly undertaken, and to joint tenantcy of land, in the absence of express agreement. Under these circumstances, when property, real or personal, may have been jointly pledged, mortgaged, or otherwise temporarily transferred, any one of the

parties may discharge his portion of the obligation and redeem his share of the property.

13. If a partner retire, he usually takes a quittance in full (Farigh kutee) from the firm, releasing him from all his reponsibilities, and causes this release to be publicly notified. Should he fail to do this, he will be liable for all the debts of the partnership, both before and after his retirement. But if he shall have published the notification, he will not, ordinarily, be liable; his individual liabilities have been accepted by the remaining partners of the firm. The Court can, however, stay the release on the prayer of any creditor pending a final adjustment, and can subsequently annul any release if it should appear to have been obtained with a view to defraud the creditors.

14. But if the partnership shall have been entirely dissolved, then neither the release which the partners may have given to each other, nor any adjustment of accounts which they may have made, will relieve them from any outstanding debts which may be charged against the firm.

15. In the event of bankruptcy or insolvency, the Court will cause the joint and the private property of each partner to be collected, and having in the same manner collected his joint and his private debts, will cause the one to be discharged by the other distributing rateably to each creditor, that is to say, the sum total of each partner's assets of all kinds will be set against the sum total of his liabilities of all kinds. It will not be legal to assign one proportion to the partnership debtors and another to the private debtors, nor will it be legal to set the aggregate of the assets of the whole firm against the aggregate of their liabilities; otherwise injustice would arise, inasmuch as some partners might have more private property, and fewer private debts, than others.

16. If one partner should die, or become incapacitated, the firm will not necessarily be broken up; the remaining partners would be at liberty, either to give him, and his estate, a full release, or to admit his heir or representative to the partnership.

17. It is the duty of choudrees to give currency and publicity to all notifications of partnership; to see that the proper books (bahee) and registers are kept according to the usage of trade; to aid in winding up concerns when partnerships are dissolved; when bankruptcy or insolvency occurs, to act as official assignees and administrators of the effects, to assist

in procuring a true registration of assets and liabilities, and in effecting compositions with the creditors.

18. The preceding clauses are conformable to the general tenor of the Hindoo and Mahomedan Laws, and to the mercantile usage of this Province. If questions should arise, for which no provision has been made in this Section, they must be decided according to custom, which the Court will ascertain from choudrees, or other competent parties.

Section XVIII.

BILLS OF EXCHANGE.

1. THE parties concerned in a Bill of Exchange are the *drawer, drawee, acceptor, endorser, endorsee, payer, payee,* and *holder.*

2. Bills of Exchange (Hoondees) are chiefly of two descriptions, namely "*Shâh-jôg,*" or payable to bearer, and "*Nâm-jôg,* or payable to the party named in the bill, or his order. There are particular formulas for these bills, both as regards phraseology, and the mode of attaching signatures and superscriptions. These forms are well known to commercial people, and should be scrupulously observed. A *Nâm-jôg* bill may, or may not, be accompanied by a descriptive roll of the party in whose favor it is granted. It may be payable at sight, or after a certain date, specified in the bill or fixed by custom of trade. When payable at sight, it is termed "*Durshunee.*" It may be cashed with, or without, security, but when there is a descriptive roll, or when the identity of the holder or payee be known, security is not usually required. A *Shâh-jôg* bill is considered payable to any respectable person *(Shâh)* who may present it to be cashed. It is payable only after a certain period of usance specified or implied. It is usually cashed on the same condition with regard to security as *Nâm-jôg* bills. Bills of either kind can be endorsed or transferred, unless the *Nâm-jôg* bill be accompanied by a descriptive roll, in which latter case a transfer would be inoperative.

3. The terms within which bills or drafts become payable are usually fixed by custom, and vary according to the distance between the places at which the drawer and drawee reside. If the party who obtains the draft desires it to be made payable after a period less than the customary period, he must pay extra interest for the difference between the lesser and the full

term. If he cause it to be made payable after a period, in excess of the customary period, then he will receive interest on account of the extra period. If he retain the draft in possession after the expiry of the term, he will obtain no interest for that additional period unless he should have made some special agreement to that effect with the drawee.

4. Parties who may cash, accept, purchase, or receive with endorsement, Bills of Exchange, are bound to exercise due caution, and to require adequate security from the opposite party in the transaction, unless indeed such party be well known as trustworthy. If the payer, acceptor, receiver, or purshaser, act without certain knowledge, or without the precaution of security, he will be liable for any injury which may accrue on account of the transaction to other parties concerned in the draft. The surety affixes his signature on the face of the bill, and thereby becomes responsible for its amount. If there be several sureties, each will be liable for his share, and no more.

5. If the consideration for which the bill was granted to the holder be illegal, or grossly insufficient, or if there be involved any of those circumstances which would ordinarily vitiate a contract, then such draft may be declared invalid as between those parties; but if it have been transferred to a *bonâ fide* transferree for a good consideration, then it will be valid as between the parties to such transfer; and so also it will be valid as concerns those who may, in good faith, subsequently become parties thereto.

6. It is ordinarily incumbent on the holder of a bill or draft to present it for acceptance within the term if possible, and to apply for payment immediately on the expiry of the term. But it is not uncommon for holders having obtained acceptance from the drawee to retain bills in their possession for some further time, which may be greater or less according to accident or circumstance, especially when they repose confidence in the drawee. If after this interval, the bill should not be cashed on presentation, or if, in the interim, the drawee should become insolvent, still the holder may demand payment from the original drawer, and is not rendered responsible for what may appear to be the consequence of his own neglect. In these cases it is the drawer who, by mercantile custom, is made responsible for the exercise of vigilance. He is expected to ascertain the fate of the bill he has drawn, to enquire whether it has been presented, accepted, or cashed. Of these circumstances he can satisfy himself by demanding the return of the

"*khokha*," *i. e.* of the original bill, with a certificate of payment inscribed thereon. If, from the information he is thus supposed to acquire, he should be dissatisfied with the delay that has taken place, or should be doubtful as to the ulterior results thereof, he can cancel the draft, cause payment to be stopped, or make such arrangements as may conduce to the protection of his own interests. If he omit these precautions, he must bear the consequences. If under the above circumstances, however, the holder, having procured the acceptance of the bill, should subsequently engage in dealings with the acceptor, and if the acceptor should then refuse or fail to cash the bill, the loss must be borne by the holder, and the drawer cannot be required to make good the amount.

7. The acceptor inscribes the word "accepted" at the foot of the draft. The money will be paid to the holder, whoever he may be, whether he be the same person who originally presented the bill for acceptance or not. The whole, or a part of the amount, may be paid according to the convenience of the payer and payee. If any objection be made by the drawee, or acceptance refused, or partial payment only be tendered, or if, for any reason, payment be not rendered, the holder is bound to give immediate notice to the drawer, and to any other of the antecedent parties to the bill from whom he may intend to demand payment. If the drawee have information of the drawer's death or insolvency, he ought not to accept or cash the draft; still if he do so, he can recover from the drawer's estate. If the bill be for a large amount, some days of grace will be allowed for payment, and such limited period of usance will be fixed by custom.

8. If the bill be lost or stolen, the holder must give the earliest practicable notice to the drawer and to the drawee. But if he obtain a duplicate (penth) or triplicate (purpenth,) he may still obtain payment from the drawer, notwithstanding that the original bill should have been cashed in the interim, inasmuch as the payer will recover from the payee or his sureties. If no security should have been taken, then the payer must pay a second time to the rightful holder, and re-imburse himself as he best can for his loss in the first mistaken payment.

9. The endorsee or purchaser is bound to act with caution; if the seller or endorser should, eventually, appear to have had no title, and to have merely found or stolen the bill, the endorsee must make good the amount to the proper owner on demand, recovering as he can, from the endorser, that is,

from the thief or the finder, or from the sureties, should any have been obtained.

10. There may be a special endorsement on a *Shâh-jôg* bill, though it is not absolutely necessary. If the bill should have been transferred by mere delivery, without such endorsement, it will be difficult to bring the transaction home to the intermediate parties; but a regular endorsement is essential to the transfer of a *Nâm-jôg* bill.

11. Immediately that any objection, either as regards acceptance or payment, has been made by the drawer, the holder, having given notice, may sue the drawer and all other antecedent parties at once, and may obtain a decree against all; and may execute it against whomever of them he pleases; but he can only obtain the full satisfaction once. He may commence his suit immediately on non-acceptance, without waiting for expiry of term of usance.

12. Payment should be made to the holder himself, or to his accredited agent, and the bill should be delivered to the payer: a receipt of payment should also be endorsed.

13. A gomashta may grant, endorse or accept bills without special permission. He will not do so in his own name, but in the name of the firm. Also, if he be absent from the house, he may draw and endorse bills, but in such a transaction he must attach a memorandum to the bill stating the name of the firm for whom he acts.

14. "Jawabee Hoondees" are merely letters of recommendation; they are rarely granted in this Province, and do not require further exceptation.

15. The "anth," a species of premium and discount on drafts current among merchants, formerly ranged at variable rates in different places. For many years past it has been fixed at an uniform rate of ten per cent., and one rupee extra on each hundred. In Bills of Exchange it is frequently the practice to denote the sum in the rupees of re-called currencies, such as the Nanukshahee, Sika, Furokabadee, &c.

Section XIX.

DEBT, INTEREST, AND MESNE PROFITS.

1. By the Hindoo and Mahomedan Law, the heirs of a deceased person must pay his debts to the extent of the assets, or of the property he

may have left to them. This principle may be enforced by the Courts. But although, by the Hindoo Law, a bonded debt may be, under all circumstances, claimable from the son and grand-son of the obligor, this rule will not be carried out except in the case just put, and the heirs will not be chargeable with an amount greater than that which they may have inherited.

2. The first charge on the estate of a deceased is the cost of his decent interment—then follow the debts (including dower if a Mussulman) and the allowance to those who, by law, are entitled to alimony—and then, lastly, the payment of legacies and the distribution of heritable shares.

3. The debts will be first realized from the persons or property that are primarily responsible. Thus a decree against a surety for his principal's debt will not be executed, until the attempt to recover from the principal himself has been made and failed.

4. The Courts are not bound by any restrictions with regard to usury. Debtors and creditors are allowed to arrange the terms and conditions of interest in whatever manner they may deem most conducive to their mutual benefit. The Courts will decree whatever rate may have been agreed upon, *bonâ fide*, between the parties. If no special rate shall have been agreed upon, then the Court will fix what may appear an equitable amount with reference to the custom of the locality, the usage of trade, or the merits of transaction. It will be remembered that the rates of interest vary for different classes of cases and in different places.

5. If in any case the amount of interest shall be deemed unjustly usurious, the Court will decree only as much as may appear just under the circumstances.

6. The period during which interest is demanded must not exceed twelve years. If a portion of this period be anterior to British rule, the amount of interest for that portion will be adjusted on the same principles as for the remaining portion subsequent to British rule. If debtors have, previously to British rule, signed bonds for exorbitant interest according as the creditor may for time have presented the balance of accounts, which amount of interest could never, perhaps, have been recovered if the native rule had continued, but which interest is now claimed for recovery through the Courts; then the Judge will consider the relative position of the two parties, and the merits of the transaction, and will decree as much interest as may seem equitable. The debtor need not be compelled by the Court

to pay the entire amount of interest, if there be reason to believe that the bond was executed through fear or ignorance.

7. Wasilat, or mesne profits, may be decreed for any period not exceeding the ordinary term of limitation. If the amount be disputed, the Court will *not* call upon the parties to produce accounts, nor will enquiries be made as to the actual profits during previous years. Such proceedings are apt to stimulate litigation. But the Court will fix an approximate amount by summary calculation, either with or without the aid of arbitrators.

8. The Court will duly inform the parties, that interest, mesne profits, and other accessories, if sued for at all, must be claimed together with the principal, and that the amount of such collateral claim must be added in when the value of the suit is estimated.

9. In case of insolvency or bankruptcy of any kind whatever, the Courts are authorized, at the instance of the debtor or debtors, or of the creditor, or one or more of the creditors, to take a statement on oath of the assets and liabilities of the debtor; to register all claims of creditors; to invite, by proclamation or other notification, the appearance of claimants by a certain date to be named by the Court; to detain the debtor on security, or in default thereof, in custody; to attach all his property, moveable or immoveable; and to exempt his person and property from further legal process, pending enquiry and the final orders of the Court.

10. After a full enquiry into the origin, nature and circumstances of the debts, and the conduct of the debtor in relation thereto, and after the completion of arrangements for the disposal or administration of his property for the benefit of the creditors, the insolvent will be discharged by the Court, on his signing an agrement to liquidate his unpaid debts from any property he may subsequently acquire; provided that his discharge shall not be opposed by any of the creditors on the ground of alleged concealment, fraud, recklessness, or other gross misconduct in reference to the debts. If the insolvent should appear to have been guilty of any misconduct as above described, and if his discharge, for that reason, should be opposed by any of the creditors, the Court may, at its discretion, award a term of imprisonment in the civil jail not exceeding one year.

11. The attached property of the insolvent will be sold or administered, under the direction of the Court, either through the agency of its own officer,

or of assignees, in the manner most conducive to the interests of the creditors; and the proceeds will be divided amongst the said creditors by a "*pro rata*" distribution. The Court will also give effect to any composition or arrangement agreed upon between the debtors and the majority of the creditors, provided that no injustice or injury shall appear to be unnecessarily inflicted on any of the parties concerned, and that no fraud nor collusion be suspected. If any individual among the creditors object to such arrangement, the Court will decide as to the validity or otherwise of the objection.

12. If it appear that the debtor, after becoming insolvent, or in expectation of becoming so, has transferred his property, or any part thereof, with a view to defrauding his creditors, or to giving one or more creditors a fraudulent preference over the others, the Court will annul such transfer, declare the title defective, and treat the property after the manner described in the preceding clause.

13. An insolvent, once released or discharged, will not subsequently be liable to arrest or imprisonment, on account of any debt registered up to the date of the discharge, unless he shall be proved to have been guilty of fraud or concealment. But any property he may afterwards acquire, or be found in possession of, will be liable to seizure for liquidation of those debts.

14. In the conduct of the cases described in the preceding clauses, the Courts will be guided by the rules of procedure as laid down in Sections I. and V. Part II. of this Code.

15. Noting in the preceding clauses will apply to persons who may have been admitted to the benefit of the insolvency laws at the Presidency.

Section XX.

LIBEL.

1. Any person who makes a false statement, verbal or written, calculated to injure the character of another, is held to have committed libel, and may be sued for damages by the party injured. The Courts will not recognize any distinction between libel and slander.

2. The defendant may plead the truth of the statement in question. If its truth should be substantiated, and if its publication should appear to

be for the benefit of the community at large, or of some individual, and not to have proceeded solely from malicious motives, then such statement will not constitute libel. But if the statement shall appear to have been unnecessarily and *maliciously* made, then its truth cannot be accepted as a complete justification, though it may be urged in mitigation of damages.

3. Injurious statements made by any party, in a Court of Justice, which may be strictly relevant to the matter before the Court, cannot be made the subject of an action for libel. But if the statements are irrelevant and libellous, then the fact of their having been uttered in a Court of Justice will not protect the party uttering them, if an action should be brought for the libel. If the Court, before whom they were made, should have fined the party making them for contempt, that will not prevent the injured party from suing for damages.

4. If the libellous statements should involve any legal criminality, and have been visited with punishmeet in a Criminal Court, this circumstance will not bar an action for libel. For instance, if a party should have been punished by a Criminal Court for bringing a false charge, he may still be sued for damages by the injured party in a Civil Court.

Section XXI.

CANONS REGARDING LANDED PROPERTY.

1. The rights and interests of a landed proprietor may be represented by, *firstly*, actual holding or possession, or, *secondly*, by share, or, *thirdly*, by both, that is, partly by share and partly by possession, and no decree can be valid which runs counter to the tenure of the estate.

2. A share may be represented by a symbol, such as a well, plough, rupee, seer, and the like, or by fractional parts thereof.

3 The interest and landed estate may be expressed either by the amount of share, or the amount of land in possession, or partly by both.

4. When one portion of an estate is divided or held by possession, then the remaining undivided portion is divisible, either according to possession, or according to shares.

5. Any person possessing a share or a holding in an estate is entitled to his rateable portion in any perquisites or common accessories which may

be attached to the general property, or may belong to the body of shareholders at large, such as produce of forests, grass, &c. And if the right of such person be transferred, then the transferee would succeed to these perquisites, unless special cause should be shown to the contrary.

6. So also the transferee, whether temporary or permanent, would share in the liabilities of the community, such as village expenses, &c.

7. Absentee shares are usually held to be entitled to re-admission within a reasonable time, on the payment of any claims which the brotherhood may have against them. In the conditions of such re-admission the settlement records must be consulted.

8. The right of dwelling in a village is distinct from that of holding land in the estate attached to the village; consequently, when a sharer's share is alienated, his dwelling-house is not necessarily included; but all his rights and interests in the common ground of the village site would cease and be transferred. A non-proprietory resident cannot be ousted from his occupancy, but if he desert his house, the ground site reverts to the proprietors who may then dispose of it. If he desire to sell his house, the proprietors may claim pre-emption.

9. There may be two or more kinds of property in the same land, quite distinct from each other, as for instance, there may be, on the same holding, a talooquadar, a proprietor, and an hereditary cultivator. The rights of either of these three parties may be transferred without any prejudice to the rights of the others.

10. The privileges of a cultivator, whatever they may be, are not affected by change of proprietors, unless the estate be transferred for arrears of revenue.

11. There may be various rights connected with the land. The rights of cultivating and enjoying the profits thereof, of cutting timber, of making wells and gardens, and the like, may be found distinct and belonging to different persons.

12. Parties in temporary possession of proprietorship of land, such as lessees, will not, unless it should have been expressly stipulated, possess other rights beyond the right of holding and cultivating; but they may cut timber from trees growing wild, for ordinary agricultural purposes. They may, however, claim compensation for improvements, if such claim appear fair, or if there have been an express engagement.

13. There may be hereditary and non-hereditary cultivators. The rent of the hereditary cultivator cannot be enhanced, within the term of settlement, beyond the fixed sum or rate, nor can he be ejected as long as he may contract to pay that rent. At his death, his next male heir or heirs will succeed to these privileges. But he cannot, unless there shall have been an express stipulation, bequeath or transfer his rights, nor sub-let his holding. He may also possess the privilege of cutting timber, digging wells and making gardens, but it is requisite that the exercise of these privileges should have been guaranteed at the settlement. If he should vacate his land, all privileges cease, and cannot subsequently be resumed without the consent of the proprietor.

14. A non-hereditary cultivator, or tenant at will, cannot claim any of these privileges unless they shall have been expressly guaranteed him. But a timely and formal notice is necessary before he can be ousted, or before his rent can be enhanced ; and a written engagement is required to support the demand of the landlord for the payment of enhanced rent.

15. Any cultivator, having been illegally ousted, may sue for damages, and if he be re-instated, the party who may have held possession during the interim may, on being removed, also claim damages from the landlord.

16. In joint undivided estates, any sharer may cultivate land on the terms usually granted to a cultivator.

17. The out-going cultivator has no claim to compensation for improvements in the absence of express engagements.

18. The authorized sewaee, or extra items, may be charged together with arrears of revenue, but no item, except those fixed at the settlement, can be entered in the village expenses.

19. The landlord cannot, without special agreement, claim from the tenant any items in addition to the rent.

20. The proprietory body cannot realize bazaar collections, or any other dues, from the non-agricultural residents, except the house tax, or other police rates demanded by Government, or other items fixed at the settlement.

21. The village servants cannot claim from the proprietors any regular remuneration, nor the proprietors from the village servants any service, except fixed at the settlement.

22. Succession to, or partnership in, the lumberdaree cannot be a matter for litigation in the Civil Courts.

23. In villages adjoining rivers, it is not unusual for the holdings to be periodically re-allotted by the community, in order that relief may be given to distressed sharers, whose lands have been swept away by the floods.

24. When the ownership of land, thrown up by the river, is contested by villages on the opposite banks, the land is generally considered to belong to that bank from which it is separated by the shallowest of the two channels. But in this respect local customs will be followed whenever they are ascertained to exist.

Section XXII.

MISCELLANEOUS.

CASTE.

1. It has been already declared that degradation, or expulsion from caste, will not occasion any civil or legal disability. Nevertheless, it is customary with native communities to declare such excommunication, either through the heads of tribes or public assemblies, or by any mode which local custom may prescribe, and to enforce the award by social sanction, and by the influence of public opinion. The Courts have no power to enquire into or pronounce upon the merits, grounds or nature of such awards, provided that no illegal consequences are involved. An action cannot be sustained to dispute them, or to obtain reparation from those who promulgate or enforce them, but no aid will be afforded by the Courts in execution thereof. But any man who may, wilfully and maliciously, by word or deed, or through gross negligence, cause another to be degraded or excommunicated, may be sued for damages by the injured party.

LIEN.

2. A lien is the right of one party to detain property which may be in his possession, belonging to another, on account of labor bestowed on, or for, that property, or on account of a debt due from the owner. This remedy by detention may be permitted to all trades or professions exercised for the public benefit. But it will not extend to transactions between individuals

not connected with the engagement of any particular trade or profession. Thus carriers of all kinds, by land or water, manufacturers, factors and agents, tradesmen and bankers, have a lien on goods confided to them in the way of their business. But cattle cannot be detained on account of sums due for their pasturage. In no case can the party who has the lien sell the goods on his own authority; and he may be sued by the owner for damages on account of any injury which may have accrued from improper detention. Having detained the goods, he is responsible for their safe custody in the same degree as if he had been a pawnee.

GUARANTY.

3. The limits of a surety's responsibility will be decided by the terms of the agreement. In the absence of express stipulation his liability will be co-ordinate with that of the principal. On the death of the surety, his estate will be chargeable with the liability of suretyship, and will be treated in the same manner as all other debts; but his heir cannot be held personally responsible.

INSURANCE.

4. In this province, it is customary to insure only such property as may be in transit by land or water. The responsibility of the insurer varies with the terms of the agreement. In some cases he is liable for any damage, partial or entire, which may befal to the property, sometimes for only one or the other, the rate of insurance varying with the degree of responsiblity. The policy of the insurance generally exceeds the value of the property, and the insurer arranges the transport through his own agents. If the goods should have been given in charge of the owner's servants, those servants will be responsible for ordinary care. If the property should have been destroyed or injured through their gross negligence, the insurer may refuse to pay the policy. Insurance contracts, like all other contracts, will be vitiated by fraud on either side.

COPYRIGHT.

5. Any question which may arise regarding copyright will be decided according to the provisions of Act XX. of 1847. The copyright of any book,

published during the life-time of the author, will belong to him, and his assigns, for the term of his life, and to his heirs or assigns for seven years after his death. But if this term of seven years shall expire before the end of forty-two years after the publication of the book, the copyright will endure for such period of forty-two years. And if a book should be published after the author's death, the copyright will endure in the manner last described for forty-two years. The copyright of the articles in a periodical will belong to the proprietor or publisher of the periodical for twenty-eight years from the time of publication, and to the author for the remaining portion of the forty-two years. Any person publishing, selling, or exposing for sale any book, in infringement of these rules, will be liable to be sued for damages by the aggrieved party. But before the suit can be laid, the book must have been registered in the prescribed form. An application for registration may be lodged with any District Officer (accompanied with the requisite particulars,) and the Registry Fee of two Rupees to be forwarded to the Presidency.

RELIGIOUS ENDOWMENTS.

6. In religious institutions, Hindoo or Mahomedan, the Prior, or head of the Establishment (Peer, Sujada Nisheen, or Mohunt,) administers the entire property of all kinds, for the benefit of the endowment, and in fulfilment of the trust.

Such property cannot be alienated nor applied to any other object. The disciples (Mureed, Chela, Sadh, Gurbhaee) do not participate in this administration, except with the consent of the Mohunt, but they are entitled to such maintenance as befits their condition. Members of these institutions cannot ordinarily become possessed of private property; whatever they may acquire in the exercise of their vocation is thrown into the common stock, and devoted to religious uses. The head of the establishment has authority over the disciples, to expel them, or to discontinue their allowances for gross misconduct, or for breach of the rules of their order; but such punitive measures are subject to appeal. The succession to the headship of the institution is elective, not hereditary; nor does seniority confer any positive right in this respect. The head does frequently nominate his successor; sometimes he appoints a deputy during his life-time, who may succeed after his death. But such nominations on the part of a deceased

Mohunt require the confirmation of the disciples at large. If any dispute should arise at an election, a reference is made to the heads of neighboring institutions. The limitation of the Civil Court's authority, as regards public endowments, has been described in Clause 11 Section I. In matters relating to private endowments, the Court can interfere if a suit should be preferred, but not otherwise.

PRIESTS, RELIGIOUS FEES, AND PRESENTS.

7. Perohits and others who perform sacred offices, when officiating at ceremonies, usually receive fees and allowances from their employers and constituents (jijmans.) The employment of the minister, and the payment of the fees, are enforced by social rather than legal sanction. No party can be legally compelled to employ a priest, nor to pay fees, unless some service may have been actually rendered, in which case the claim of the priest for remuneration may be judicially entertained. If a dispute should arise in the family of such Perohit or Priest regarding the property thus acquired, the succession or distribution will follow the ordinary rules of inheritance and partition.

Among Hindoos it is sometimes the custom for neighbors and friends of the same caste to make presents (Neota, Neondra, Tumbol) to each other on the occasion of marriages, and it may happen that parties, who have received such presents themselves, refuse to contribute when their turn arrives. In cases of this nature, the Court may, at its discretion, compel the recusant to contribute, if the demand should appear equitable, and be sanctioned by local custom.

PART II.

PROCEDURE.

Section I.

JURISDICTION.

1. THE Officers empowered to administer Civil justice in the Punjab are the Deputy Commissioners and their Assistants, covenanted and uncovenanted. In the term "Uncovenanted Assistants" are included Extra Assistants, Tehseeldars and other Officers specially invested with judicial powers. The functionaries above described will be controlled by the Commissioner of the Division, and the several Commissioners by the Judicial Commissioner.

2. Suits of a value exceeding one thousand Rupees, for property, moveable and immoveable, will be tried by the Deputy Commissioner. Suits of a lesser value can be tried by the Assistants, covenanted or uncovenanted. But it will be competent for the superior judicial authorities to fix the extent of powers to be exercised by the Assistants, of whatsoever grade, as regards suits within the value of one thousand Rupees. And special authorization will be requisite, from the Judicial Commissioner, in order that any Assistant may exercise powers up to the full limit.

3. The Commissioner is competent to remove any pending suit from the jurisdiction of one District to that of another. The Deputy Commissioner will decide what suits are to be entertained and tried by each of his Assistants, provided that the limits prescribed in the preceding clause be observed. He is also competent to transfer any cause, depending in a lower Court, to his own Court, or to any other Court subordinate to him.

4. The Deputy Commissioner can entrust to his subordinates the execution of ministerial processes in suits beyond their competency to try, such as the appointment of arbitrators, the attestation of their award, the execution of decrees of Court, and the like, whenever such a course may obviate inconvenience to the suitor or other parties concerned.

5. The value of suits for landed property will be calculated by the annual revenue at which the land in dispute has been assessed by the Revenue authorities. The same rule will apply to Jageer or Mafee lands which may have been assessed. If such land should not have been assessed, its revenue will be estimated by the rates prevailing in adjacent Khalsa estates.

6. No suit can be heard in cases where the cause of action shall have arisen more than twelve years before the commencement of such suit, unless the complainant can show that from minority, or other sufficient reason, he had been precluded from obtaining redress; or that he had preferred his claim before a Court of competent jurisdiction, and had been prevented by some valid cause from prosecuting such claim; or that he had, within the period above named, obtained an admission, or partial satisfaction, of his demand from the opposite party.

7. Within the term "partial satisfaction of demand" will be comprised payments in part liquidation of debts, as exhibited by the accounts kept between the creditor and debtor, and periodically balanced by them. Such liquidations, if really effected from time to time, do constitute valid grounds for the entertainment of suits, otherwise barred by the rules of limitation. But this principle, if incautiously applied, will furnish temptation to fraudulent litigation. It might not be difficult to procure the entertainment of suits for debts, contracted more than twelve years previous to the action, or even for debts of very old date, by fabricating entries of part payments. It might also be possible to recover a large and long outstanding debt, by proving a single payment of fractional amount within the period of limitation. But in order that such payments may come within the meaning of the preceding clause, they must be continuous and regular—there must be something tantamount to a running account. In such cases then the Court will consider—*first*, the genuineness of the entry, and *second*, the continuity of the payments. If the entries should be open to doubt, and the payments separate or scattered, the rule of limitation will not be relaxed. In running accounts the period will be calculated from the date of the last transaction.

8. When a party is ousted wrongfully from the possession of that which he previously possessed, the cause of action arises at the moment when the privation of right occurs. When a party wrongfully excluded

from the enjoyment of that which he has not possessed, the cause of action arises at the time when he first becomes entitled to demand such enjoyment.

9. Suits for damages, on account of injuries to character, must ordinarily be prepared within three months from the date on which the act complained of was committed; or from the date on which the complainant became aware of the defamation, provided he can show to the satisfaction of the Court that he had no knowledge of the circumstance previous to that date. This clause will also apply to injuries relative to caste, as described in Section XXII. Part I. on Law.

10. Suits, for land or other immoveable property, must be instituted in the Court of the District where the property is situated, If the property is situated in more than one District, the plaintiff may, at his option, sue in either of these Districts. Suits of all descriptions, not for land or immoveable property, may be instituted at the option of the plaintiff, either in the District where the defendant, or any of the defendants, reside, or where the cause of action arose.

11. The conditions under which foreign subjects and others, resident beyond the British territories, may be parties to suits, have been already described in Section I. Part I. on Law. It will be understood that, in whatever manner the suit may have been heard or decided, no process can be issued, nor decree executed, against persons residing, nor property situated, in foreign jurisdiction. The Civil authorities of one District will duly execute, within their jurisdiction, all legal processes issued by the authorities of another District, and if possible, return them within the specified term. The Officer executing the process will refer any objection which may be made against the execution to the Officer issuing the process, who is alone responsible for the legality and propriety of the process. But the execution may be suspended until the objection shall have been disposed of by the Court whence the process issued.

12. Officers sitting in the Appellate Courts, Deputy Commissioners, and Officers exercising the full powers of Assistant Commissioners, as described in Clause 2, are competent to sentence any person guilty of gross contempt of their lawful authority, or of gross contumacy or disrespect, or resistance to any process of the Court, to a fine not exceeding two hundred Rupees, or to imprisonment without labor for a period not exceeding one

month. Inferior Courts can, for a like offence, sentence to a fine of fifty Rupees, or to fifteen days' imprisonment without labor : such sentence to be subject to confirmation by the Deputy Commissioners. The fines will be realized, if necessary, by distraint and sale of personal property.

13. No Judicial Officer can try a suit in which any of his own relations or dependants may be concerned.

14. The Deputy Commissioner can suspend or dismiss any Ministerial Officer guilty of neglect or misconduct in his own Court, or in any of the Courts subordinate to him. If there appear grounds for a criminal prosecution, the case must be referred to the Commissioner, who can cause it to be tried before any competent Officer he may select, other than that Officer by whom the original enquiry had been conducted. If from neglect, omission, or wilful and corrupt misconduct of any Ministerial Officer, injury should accrue to a suitor or private individual, the Officer will be liable to damages at the suit of the aggrieved party.

15. No Officer is competent to revise his own decision when once passed. If he should consider any revision expedient, he must refer the case to his immediate superior.

16. The Commissioner can revise the decisions of Courts subordinate to him for special reasons, although no appeals should have been preferred, provided such revision take place within the term hereinafter specified for the hearing of appeals. In like manner the Deputy Commissioners are competent to revise, without appeal, the decisions of their subordinates, especially of those who exercise the lesser powers described in Clause 2.

Section II.

ORIGINAL SUITS.

1. Petitions of plaint will be received by the Courts on every day, except holidays. The Deputy Commissioner can authorize his subordinate Courts, especially those located at a distance from the sudder station, to receive petitions in suits within their competency. He can also empower any of his Assistants, who may be located at the sudder station, to receive all petitions which may be presented for suits of whatever value.

2. When the petition of plaint is presented, the Court will cause the petitioner's deposition to be taken in detail, as regards the nature of the claim and the means of proving it. Any documents in support of the claim, which the petitioner may have with him, will be filed with the deposition; and if additional documents should be forthcoming, the Court may postpone further proceedings until they also shall have been produced. If when the deposition has been attested, and the documents filed, the Judge shall consider that there are *primâ facie* grounds for believing the claim reasonable, the defendant will be summoned to meet the plaintiff in Court on a fixed date. In the writ of summons will be specified the name and residence of the plaintiff, and the amount or description of the claim. On the appearance of the defendant, his deposition will be taken in presence of the plaintiff, and any documents he may present will also be filed. The Judge then confronting the parties will compare their respective statements, and if practicable will induce the parties either to compromise the suit or submit to arbitration. If this be not practicable, then the Judge will separate off all matters and points in the case which may be irrelevant or unfit for decision, and, selecting the specific issues for trial, will distinctly explain them to the parties. A brief proceeding, setting forth these issues, will be recorded. The parties will be required to name the witnesses by whose evidence they desire to prove the issues. The Judge will then summon the plaintiff, defendant, and their respective witnesses, to appear altogether before the Court on a fixed date. When the parties and their witnesses appear on the appointed day, the Judge will immediately cause the depositions of the witnesses to be taken down in writing within his own hearing and in the presence of the parties. The depositions, having been written down, will be read out before the Judge and the parties. The Judge will ascertain, by questioning, that the deposition really represents the witness' meaning. When the statements of the several witnesses are at variance, he will confront the witnesses one with the other, and elicit the truth by cross-examination. The parties themselves also will have full opportunities of interrogating. When the evidence has been thus concluded, the Judge will, if practicable, give judgment that same day in open Court, and in presence of the parties. If the judgment should be, for any good reason, postponed, the witnesses and parties will be allowed to depart, and the parties alone be directed to attend on a fixed date to hear judgment pronounced.

The decree will be drawn up in the language used by the Court, briefly recapitulating the points tried and the grounds of the decision. If the Judge be an European Officer, an abstract of the decision will be written by him in English, and filed with the record of the case.

3. In the preceding clause the ordinary course of a trial has been prescribed, but there are various matters connected therewith which need further specification.

4. If a plaintiff fail to attend on the date appointed for the defendant's appearance, the deposition of the defendant (if he should appear) will nevertheless be taken. If the defendant admit the truth of the demand, in part or in whole, a decree will be recorded accordingly. If the defendant dispute the demand, the case will stand over for one month from the above-mentioned date, and will then be struck off the file. If the plaintiff fail to attend on the day appointed for trial, the case will nevertheless be proceeded with in his absence, and judgment given *ex-parte*. If in any case the Court should find it necessary to summon, either the defendant or any witness, a second time to meet the plaintiff on his appearance, an allowance may be granted to such parties by the Court at the expense of the plaintiff.

5. When a defendant is summoned, the peon charged with the summons will serve it personally on the defendant. He will ordinarily accompany the defendant into Court, but will not use any force in causing such attendance, and will not arrest the defendant if he should refuse to attend. If the defendant should not be found at his usual place of residence, and if there should be reason to believe that his absence is wilful to evade answering the suit, the Court may at once cause his property to be attached, and issue a second summons directing his arrest wherever he may be found. A proclamation will, at the same time, be issued for his appearance within fifteen days, one copy of which will be affixed at his dwelling, and another at the Court-house. If he should not appear within ten days after the expiry of the term of the proclamation, the case will be proceeded with, and judgment given. If there should not be reason to believe that the non-attendance of the defendant is wilful, then the Courts will issue a proclamation in the manner above described, for a period not exceeding one month, at the expiry of which period the Judge will proceed to trial. The Court may also, at its discretion, issue a second summons, provided that the trial be proceeded with on the expiry of the proclamation. If during any stage of the proceedings

the Court have reason to believe that the defendant intends to abscond, or to conceal or alienate his property for the purpose of evading his debts, the Court can attach the property of such defendant, and arrest his person. If on his appearance there be still reason to apprehend his absconding, and if there be *primâ facie* grounds for believing the claim just, he may be detained by the Court on security, or in default thereof, in custody at the plaintiff's expence, until judgment be passed. But no defendant can be arrested before judgment, except in the event of evasion of process, concealment or alienation of property, absconding, or general insolvency, as described in Section XIX. Part I. on Law.

6. The witnesses will be summoned in the same manner as the defendant. The peon will ordinarily accompany them to Court on the appointed day. Attendance will be enforced in the same manner as in the case of a defendant. In the event of a contumacious refusal to attend, the Court may impose an additional fine, not exceeding Rupees 200, to be realized by distraint.

7. If a witness, or party to a suit, should be an European, or Native of high rank, or a Soldier living under military jurisdiction, the Court may, at its discretion, command the attendance of such person or his agent by serving a formal notice specifying the date on which attendance is required, or the Court may resort to the process described in Section II. Part I. on Evidence.

8. The Courts are empowered to administer an oath to any party or witness according to the ordinary form of affirmation, or according to that form which may, in the opinion of the Judge, be most acceptable to, or binding on, the deponent, and best calculated to elicit the truth. The ordinary form of affirmation is as follows :—"I affirm, in the presence of Almighty God, that what I shall state, regarding this case, shall be the truth, the whole truth, and nothing but the truth."

9. Any person refusing to give his deposition, or to take the oath or affirmation administered by the Court, on the conditions set forth in the preceding clause, or to produce books or papers in the manner prescribed in Part I. Section II. Clause 3 on Evidence, is punishable for contempt of Court, under the provisions of Clause 12 of the preceding Section.

10. Depositions will be written, if possible, in the language used by the deponents across the whole breadth of the paper, answers following

questions. At the heading of the deposition will be entered the name, father's name, caste, religion, occupation, age and residence of the witness. If the witness be a married woman, the husband's name will be entered. At the conclusion, the witness' signature or mark will be affixed.

11. Witnesses will be entitled to a subsistence allowance at the rate of three annas per diem for the time they may be detained from their homes.

12. In passing judgment the Court will declare the aggregate of costs. The Court will decide by which party they are to be defrayed, or may, at its discretion, distribute them between the parties.

13. Any party desirous of suing as a pauper must appear in person before the Court, unless such party should be a female of rank, in which case the application may be presented by the hand of a relation, and not by a professional agent. The application must set forth the nature, ground and value of the claim, and the name of the party against whom it is brought, and a statement of the applicant's property and its value. The Court will make a summary enquiry regarding the pauperism of the applicant, and will receive any objections or counter-statements which may be made. If the alleged pauperism be established to the Court's satisfaction, the plaint will be admitted free of stamp. If it should not be established, the applicant will be referred to the ordinary rules. Orders passed under the provisions of this clause will be open to appeal in the usual course.

14. A Razeenama, or deed of compromise, will be attested by the Court in the presence of both parties to the suit, either or both of whom may be summoned for this purpose. The reasons for presenting the compromise will be enquired into, and recorded in full on the back of the document. If the opposite party assent to the compromise, such assent, and the reasons thereof, will also be recorded. A duly attested Razeenama, on the part of a defendant, amounts to confession of judgment, and a decree will be issued accordingly.

15. The Courts will encourage litigants to refer their disputes to arbitrators, especially in the classes of cases specified in Section III. Clause 7 Part I. on Law. When the parties consent to appoint arbitrators, the presiding Officer will cause a record of such agreement to be made on plain paper, specifying the names of the arbitrators, and the precise issues to be tried. This paper will be duly attested by the parties. The Judge also may, in any case, appoint a jury of assessors.

16. With reference to private arbitration, the following supplementary Rules will be observed :—

Arbitrators will be nominated by the parties themselves ; but persons of rank, and females, may be especially permitted to nominate through agents or relatives. Either party has the right of challenging the nomination of an arbitrator ;

Arbitrators must ordinarily attend at Court. They may consult the records in Court, but they will not be allowed to take any public document to their private houses ;

The substance of any evidence which the arbitrator may take will be embodied in the award ;

The award will be presented to the Court by the arbitrators themselves, or in the event of their being persons of high rank, by accredited agents, in the presence of the contending parties, either of whom is then at liberty to urge any objection he may entertain ;

The arbitrators will record the grounds of their award. Any member differing from the majority will also record the reasons of his dissent. The award of arbitrators is not final until confirmed by the Judge, who may accept or reject it as he may think proper, in either case recording his reasons ;

If the arbitrators shall fail or refuse to attend or decide, they may be punished by the Court for contempt ;

The remuneration of arbitrators will not exceed 4 per cent. on the value of the property litigated. The Court may award less but not more. But the Courts will avoid, if possible, summoning arbitrators from a distance in unimportant cases, or putting them to unnecessary trouble and expense.

17. If frivolous, vexatious or malicious suits should be instituted, the Court is competent, when dismissing the suit, to fine the suitor, as for contempt, and realize the fine by distraint, recording his reasons. Such orders will be subject to the ordinary appeal.

18. The Courts will take the utmost care that the attendance of all parties or witnesses in a case is secured on the same fixed date, and that the case is actually heard on the date fixed for hearing. More cases will not be fixed for one day than can conveniently be heard on that day. In fixing the date the Court will be guided by the state of the file, and the distance at which the parties and witnesses reside. If a large number of

cases should come before the Court on the same day they must, if possible, be heard on that day, or at least on the day following.

19. No case will be non-suited on technical grounds. If the Judge observe any informality he will cause it to be rectified, and proceed with the trial. He will himself dictate all the intermediate as well as the final orders.

Section III.

APPEALS.

1. An appeal will lie to the Deputy Commissioner from the orders of an Assistant Commissioner, Extra Assistant, or Tehseeldar, and to the Commissioner from the orders of the Deputy Commissioner.

2. Every petition of appeal to an authority whose office is separate from that of the Officer whose decision is appealed against must be accompanied by an authenticated copy of the order appealed against.

3. The appeal must be preferred within two months from the date of the order appealed against, but the period which may intervene between the presentation of stamped paper for copy, and the completion of the copy, must be deducted from the term.

4. The Judicial Commissioner may admit an appeal from the orders of a Commissioner within three months, if special cause should be shown, or if any particular reason should appear.

5. As a general rule, it is desirable that the appeal should be presented by the appellant or his agent, and that it should be heard in their presence. If necessary, the Court will also summon the respondent. But if the Court should, in its discretion, see fit, the attendance of either the appellant or respondent, or of both, may be dispensed with, and the Judge may decide the appeal from the record. The Court may also, if it see reason, receive petitions of appeal by the post.

6. An Appellate Court may take additional evidence regarding the case on appeal, or remand it for a second investigation.

7. No decision, in itself just and proper, will be reversed on account of any technical flaw or informality. The Appellate Court will cause the error, if important, to be rectified in such a case, but will maintain the original judgment.

8. Appeals may be admitted after the expiry of the term, on valid and sufficient cause being shown by the appellant.

9. The Appellate Court is competent to suspend the execution of decree pending the appeal. The appellant may also obtain a suspension by giving security for execution of decree. Should he fail to do so, the respondent may cause the decree to be carried into effect; but if necessary, he must give security for the execution of the order which may be passed on the appeal.

10. The Rules, elsewhere laid down, regarding paupers, Europeans, and parties of rank or consideration, are applicable to cases of appeal.

Section IV.

VAKEELS.

1. In Section II. the personal attendance of parties has been enjoined, in order that the truth may be elicited by the examination of persons most interested in, and best acquainted with, the facts of the case. At the same time there will arise cases, where, from the rank or occupation of a party, it may be extremely inconvenient to attend in person.

2. Any party, plaintiff or defendant, not wishing to attend in person, may appoint, at his own discretion, an agent, or mookhteear, and shall empower him, in the usual form, to plead in his behalf. A preference will be given in favor of agents related to, or connected with, the nominating party, so as to secure, in his place, a substitute, who is also acquainted with the merits of the case, and is interested in obtaining a speedy adjustment.

3. When remuneration is given to the agent, or mookhteear, the terms mutually agreed on shall be entered in the Power of Attorney. But in awarding costs against any party cast in an action, no larger sum than 3 per cent. on the value of the property litigated shall be charged on account of the agent's fees, and any further sum such agent may claim, under the terms of his appointment, he must recover from his employer. The amount of such remuneration will not be charged in the costs of a suit, unless the Court be of opinion that the appointment of the agent was necessary with regard to the position and circumstances of the employer.

Section V.

EXECUTION OF DECREES.

1. Decree-holders will sue for execution in the Court whence the decree issued; but the Deputy Commissioner has the power of referring to the subordinate Local Court of that jurisdiction, wherein the property is situated against which execution is sued for.

2. Petitions for the enforcement of decrees must be presented within the term of one year from the date on which such decree was passed. If, however, this term shall be exceeded, and the petitioner will show the Court satisfactory reasons for the delay, a reference will be made to the Commissioner of the Division, who is competent to order the execution of such a decree.

3. On receipt of an application to enforce a decree, a notice will be served, through the Nazir of the Court, calling upon the party liable for the amount of the decree to make immediate liquidation, or to appear before the Court in person or by agent. If he appear, the Court will call upon him, either to effect the payment, or to make some arrangement for liquidation. If he refuse or profess himself unable to do so, the Court will cause such portion of his property (first moveable and them immoveable) to be attached as may appear sufficient to cover the amount due. The same course will be followed if he fail or refuse to attend. He may also be summoned and arrested in the usual manner.

4. The attachment, valuation, and sale of landed property in execution of the decrees of Civil Courts will be entrusted to the Revenue authorities. When the Courts may have occasion to attach or sell in execution of decree property other than land, their Officers will be guided by the following Rules :—

5. The attaching Officer, after preparing an inventory of the articles attached, as pointed out by the decree-holder, will give them in charge to some respectable person residing in the vicinity, taking a receipt for the same, which is to be lodged in the Court. The property will be sold as hereafter provided, and the proceeds applied to satisfying the demands of the claimant, provided, however, that agricultural implements and plough-bullocks of the husbandman, or the tools of the artisan, shall always be exempted from distraint.

6. Should the amount thus realized not satisfy the decree, it will be competent to the Court to order the attachment of any immoveable property, other than land, which shall suffice to cover the amount of balance due. When the property is situated in the jurisdiction of the Court executing the decree, the attachment shall be effected by the Nazir of the Court. When the property is situated in another jurisdiction, the attachment must be made through the Officer of that jurisdiction. A descriptive catalogue of such property will be transmitted, through the Deputy Commissioner, to the Commissioner of the Division, for authority to dispose of it. The Commissioner, if he sanction the sale, will leave the date to be fixed by the District authorities in such a manner as may secure the best sale. On the expiration of the period fixed, the property is to be sold in the presence of a Judicial Officer, who will cause the proceeds to be applied to liquidate the balance of the decree.

7. Orders will be issued to the Nazir, by the Court, directing the attachment to sell the moveable and immoveable property attached. A proclamation of the intended sale, with particulars of time and place, must be made in the current language of the country, for at least thirty days before the appointed date of sale; and a copy of the proclamation will be affixed in some conspicuous place in the village or town where the attachment took place, as well as in the Kucheree of the Court. The purport of the proclamation shall also be announced by beat of drum on the spot where the property is held in attachment.

8. If within the period fixed by the proclamation, any claim be preferred to the property thus advertized for sale, or if any objection be raised against the proposed sale, such claim or objection will, in the first instance, be presented on plain paper. If the decree-holder admit the lien, then no further proceedings are required. If the lien be disputed, then a trial will be held to be commenced by a petition on stamped paper, of the value prescribed for regular claims; and upon receipt of such a petition, duly filed, the Court shall be at liberty to postpone the sale, and enter upon an investigation, and to decide the validity of the claim or objection preferred.

9. If the claim prove to be frivolous, it will be dismissed with all the costs incurred in the investigation. But if it appear to be well-founded, the property claimed will be released from attachment, or exposed for sale, subject

to satisfaction of the claim admitted or proved; and the cost of the initiatory stamp, as well as all subsequent expenses incurred, will be charged to the person pressing the right to sell, or in such proportions between both parties, as shall seem to the Court fair and equitable.

10. Any decision which may be passed on such claim will be held conclusive only *quoad* the parties who have been before the Court. After such decision the purchaser will be put in possession of the thing sold, but no immunity can be given to property thus obtained against any just claims of absent parties.

11. If a sale be postponed, pending the investigation of such a claim or objection, and in the event of the claim being disallowed, a second proclamation, of a term not less than ten days, shall be issued for the information only of intending purchasers, but it will not be competent to the Court to receive any fresh objections during the second term, nor at any time after the expiry of the first or original advertisement; provided that the objector be allowed to show cause why he had not objected during the first term.

12. On the day appointed for sale, the attached property will be divided into convenient lots, and each lot will be put up in succession until the amount of the decree be realized. When the decree is satisfied, the sale will immediately cease, and all property remaining unsold will be at once released from attachment.

13. The entire sum bid for moveable property will be paid up within twenty-four hours, and the property will be withheld till the money is paid. A deposit of 10 per cent. on the price will be required at the time of sale, and this deposit will be forfeited, and the property re-sold, unless redeemed within the period above prescribed. If at the second sale the property should fetch a lower price than the sale, then the difference will be made up by the original purchaser.

14. In the case of immoveable property, other than land, the sale will be held *on the premises*, or at the Court-house, as may seem most expedient to procure a ready sale. An upset price will be fixed at the discretion of the Court, assisted by competent assessors, and the property may be reserved or sold to the highest bidder, as the Court may decide, if the upset price should not be attained. The property will also be sold in lots, so as to prevent the sacrifice of any property beyond the necessities of the decree.

15. In sales of real property, the full amount of the purchase money will be paid within fifteen days, in default of which the deposit of 10 per cent. required, at the time of auction, will be forfeited, and the property re-sold at the risk of the first purchaser. But the Court may, at its discretion, extend the term, if the value of the property should render such a course expedient.

16. In such sales strict regard must be paid to the rules of pre-emption as laid down in Section XIII. Part I. on Law.

17. Nazirs employed in the attachment and sale of property are entitled to a commission of 5 per cent., to be deducted from the sale proceeds.

18. In the event of the proceeds, arising from the sale of the debtor's moveable and immoveable property, not satisfying the amount of the decree, the decree-holder can apply for the arrest of the person of the debtor; at the same time, he must deposit money sufficient for the subsistence of the debtor, for a period of twenty days, during his confinement in the Jail. At the end of the twenty days, a further deposit must be made in advance for the next thirty days, and so on till the defendant's discharge. If the decree-holder should fail to lodge the requisite advance, the debtor will be entitled to release, as soon as the amount in deposit shall be expended; and no debtor thus released will be liable to any further imprisonment in the same matter, at the instance of the same party unless it be proved that he was guilty of the fraudulent concealment of any proporty that would otherwise have been available for the satisfaction of the decree, on account of which he may have been originally confined.

19. Rates for the subsistence of debtors shall not exceed three annas, except in special cases, or be lower than one anna per diem. The rate shall be fixed by the Court.

20. The Court receiving from a debtor a statement upon oath, containing a full and fair disclosure of all property belonging to him, of every kind, or description, whether held in his own name, or jointly with others, may cause enquiry to be made to ascertain the truth of the statement, or the validity of any objections which may be raised by the creditor. If the Court shall be satisfied that the statement of property so delivered is true and unreserved, the Court may, upon the surrender of the property, exempt the debtor from arrest, or imprisonment, in satisfaction of the amount of the decree.

21. With a view to prevent the protracted imprisonment of persons, for inconsiderable sums, it is provided that no person shall be liable to personal confinement for more than three months, in satisfaction of a decree not exceeding fifty Rupees; and in all other cases, for whatever specific amount, the term of imprisonment shall not exceed six months. But any creditor may oppose the release on the ground of fraud, recklessness, concealments, or other gross misconduct with regard to the debts, and if such misconduct should be shown to the Court's satisfaction, then a further term of imprisonment, not exceeding six months, may be awarded, so that the aggregate term may not exceed one year. It is to be distinctly understood, that the liberation of such prisoner does not exempt his property, at any subsequent time, from being held liable for the amount of the decree.

22. The amount paid for subsistence is to be recovered from the debtor on his release, but in failure of property to realize this demand, the defaulter cannot be detained in confinement for the re-payment of such money only, but the amount will be included if the outstanding debt can be recovered from any property which the debtor may subsequently acquire.

23. If at the time of passing or of executing a decree, it shall be shown by the debtor, to the Court's satisfaction, that the immediate enforcement of the decree will cause serious loss, or embarrassment, beyond the just penalty of the decree, it shall be competent to the Court awarding or enforcing such decree to accept an engagement from the defendant, supported by security, for the gradual liquidation of the amount due by instalments, especially in the case of agriculturists, who are best able to liquidate arrears at harvest time. To prevent future litigation, each instalment shall be paid into Court, in the presence of a Judicial Officer, and transferred, as received, to the creditor; and the Court, in determining the amount of each instalment, and the period over which the instalment shall extend, will be guided by the amount of the decree and the circumstances of the defendant; but in no case shall the term over which instalments are distributed exceed two years, without the consent of both parties. A detail of the instalments will be endorsed on the decree.

24. In the event of the debtor failing to pay his instalment at the appointed time, his property and person will be liable to distraint and arrest, and the balance of the decree may be immediately realized, according to the preceding rules, for attachment, sale, imprisonment.

25. The Judicial Officer will warn the decree-holder to attend at the same time with the defendant, when the amount of the decree is to be paid into Court. If both parties appear, the money will be paid in the presence of the Judge to the decree-holder, and a receipt will be taken accordingly. If the decree-holder should not be present, the money will be remitted to the District Treasury, and a notice will be given to the decree-holder. If the money should remain unclaimed for *three* years, it will be carried to credit as fees receivable by the Court.

26. The procedure of this Section is applicable to cases of insolvency, as described in Section XIX. Part I. on Law.

Section VI.

MORTGAGES.

1. THE several kinds of mortgage, simple, collateral, and conditional, have been described in Section XIV. Part I. on Law.

2. In the case of a simple mortgage, the mortgagor may bring a regular suit against the mortgagee, for the restoration of the mortgaged property. If the plaintiff admit that a portion of the debt is still unliquidated, must deposit that amount in Court, and no more.

3. The Court then, proceeding as in a regular suit, will inquire into the debt and the mortgage. If it appear that the debt, and reasonable interest thereon, have been liquidated by the usufructory profits of the mortgage, the Court will forthwith order the mortgagor to be replaced in possession. If it appear that there is surplus in the hands of the mortgagee, the Court will direct a refund of the same. If a portion of the debt appear to be still unliquidated, the Court will cause payment thereof to be made by the mortgagor, or retain the mortgagee in possession of the property, as may be deemed most expedient. Any claims or objections which the mortgagee may have, must be urged and disposed of during the course of the trial, otherwise they cannot be heard subsequently. One suit only can be entertained regarding the same debt or the same mortgage, provided always that due regard be had to local usage and express agreement.

4. The mortgagee also may, while in possession, sue the mortgagor for the payment of the debt, upon which the Court will proceed in the same manner as prescribed in the preceding clause.

5. In collateral mortgages the mortgagor may liquidate his debt and sue for the cancelment of the pledge. If the mortgagee be desirous of realizing his claim, he should sue the mortgagor for the payment of the debt, and then proceed in execution of decree against the hypothecated property. But he should not sue merely for possession of the property, or if he do so sue, he cannot bring a second suit subsequently for recovery of any unrealized portion of the debt.

6. The holder of a conditional mortgage may, after the expiry of the term, sue for the payment of the debt, or for foreclosure of the mortgage, in the event of non-payment. The mortgagor may also sue for redemption in the same manner as in the case of a simple mortgage.

7. If on the suit of the holder of conditional mortgage, the mortgagor shall appear, and if the truth of the claim be admitted or proved, then the Court, before ordering the mortgage to be finally foreclosed, will allow the mortgagor one year's grace, within which he may pay the amount decreed, together with the extra interest for that year, and redeem his property, and this condition will be inserted in the decree. If the mortgagor shall not appear to answer the suit, he will be summoned in the usual manner, and an *ex-parte* enquiry will be made, and a decree awarded accordingly. Then a proclamation will be issued, warning him to pay the amount decreed within one year. If the mortgagor shall not attend, nor pay within this term, the mortgaged property will be held to be absolutely sold to the mortgagee.

8. The principle of enquiry into the full merits of the mortgage and of definite adjustment of all claims of the parties connected with that transaction, as laid down in Clause 3, with reference to simple mortgages, will be equally applicable to colateral and conditional mortgages.

9. In all suits for redemption or foreclosure of mortgages, the amount of the institution stamp will be regulated by the value of the mortgaged property. If the suit should be for the recovery of a debt, then the amount of the stamp will be according to the amount of the said debt.

Section VII.

STAMPS.

1. According to the Rules for the collection of the stamp duties in the Punjab, the documents presented to the Civil Courts, in regard to the institution and conduct of suits, must bear stamps at the following rates :—

2. Petitions of plaint :—

							Rs.	A.	P.
If the value of the property claimed do not exceed 16 Rs.,							0	8	0
Above	16 Rs., and not exceeding 32 Rs.,				...	...	1	0	0
„	32	„	„	64 „	...	...	2	0	0
„	64	„	„	150 „	...	...	4	0	0
„	150	„	„	300 „	...	...	8	0	0
„	300	„	„	800 „	...	...	16	0	0
„	800	„	„	1,600 „	...	...	32	0	0
„	1,600	„	„	3,000 „	...	...	50	0	0
„	3,000	„	„	5,000 „	...	...	100	0	0
„	5,000	„	„	10,000 „	...	...	150	0	0
„	10,000	„	„	15,000 „	...	...	250	0	0
„	15,000	„	„	25,000 „	...	...	350	0	0
„	25,000	„	„	50,000 „	...	...	500	0	0
„	50,000	„	„	100,000 „	...	...	700	0	0
„	100,000	...	...	... ...	...	...	1,000	0	0

3. In suits regarding land the stamp will be calculated according to the valuation given in Section I. Clause 2 Part II. In suits for damages and compensation for injuries (as described in Section I. Clause 1 Part I. on Law), the stamp will be estimated on the amount claimed by the plaintiff. In suits for houses, gardens, and other immoveable property, not land, and for moveable property of all kinds, the stamp will be computed according to the probable selling price.

4. Copies of decrees in all regular original suits or appeals to bear the following stamps :—

	Rs.	A.	P.
In Assistant's Court, ...	0	8	0
In Deputy Commissioner's Court, ...	1	0	0
In Commissioner's or Judicial Commissioner's Court, ...	2	0	0

All other Copies of Judicial papers of any sort, ... 0 8 0

Exemption.—Copies of decrees in appeal, involving an amount not exceeding Rupees 150, calculated as explained under the head of "Plaints," provided the application be made within six months from date of decree in appeal,..... 0 8 0

Copies of decrees in original suits, involving an amount not exceeding Rupees 400, calculated as above, provided the application be made within six months from date of decree, 0 8 0

5. Exhibits, Pleadings, Razeenamas, Mookhteearnamas, Vakalutnamas, Petitions, Durkhasts, or applications of every nature, addressed to any of the under-mentioned authorities, in relation to matters pending before them in their judicial capacities, to bear the following stamps :—

	Rs.	A.	P.
If to Assistants and Deputy Commissioners,.....	0	4	4
If to Commissioners or Judicial Commissioners, ...	0	8	0

6. Petitions or appeal in regular suits from the decision of a Deputy Commissioner, or any of his Assistants, will bear a stamp of half the value of the institution fee, provided that such stamp shall, in no cases of appeal, be less than eight annas.

7. The Courts are prohibited from receiving any of the documents above described, unless bearing the requisite stamp. The value of the claim must be stated in the plaint, in order that the Court may judge of the adequacy of the stamp. If the Court have reason to believe that the value has been under-stated in the proportion of 10 per cent., the party will be directed to file a duplicate with stamp of such value as may be sufficient to complete the full amount of duty; if the party then fail to obey this direction, his cause will, at the Court's direction, be liable to dismissal.

If during the progress of a suit, any offence or evasion in regard to the Stamp Rule should appear to have been committed, the Court will refer the case to the Revenue Department.

COMMENTARY ON THE PRINCIPLES OF CIVIL LAW.

COMMENTARY ON SECTION I.

1. Regarding things for which suits may and may not be brought, and the persons who may and may not be parties thereto, defines, in general terms, the powers of the Civil Court. It is framed partly after the model of Chapters I. to X. of Macpherson's Civil Procedure.

2. As the Civil Courts are to decide in regard to all rights, except in such matters as may be specially excluded, the specification of those exceptions is the main object of this Section.

3. The exceptions chiefly tend to separate the civil from all relations with the fiscal department, and to render the latter independent of the former, on the principle that what has been done by one competent department need not be re-done or re-considered by another. In the Regulation Provinces, the Courts can revise not only the judicial acts of the Revenue authorities, but even many of their fiscal proceedings. But this principle, however useful, where the Collector and Judge are distinct persons, ceases to be applicable, where, as in the Punjab, both fiscal and judicial authority is united in the person of the District Officer. And in a new Province the conflict of different departments under the same Government is apt to mystify a people as yet unused to technical litigation. In the independence of the fiscal department there is nothing to bar aggrieved parties from appealing. Any act of the District authority may be appealed to the Commissioner of the Division, and thence to the Financial Commissioner: there is no want of channels through which remedies against error or injustice may be obtained.

4. These reasons, it is believed, will justify the clause which excepts all coercive measures for the realization of the public revenue from the cognizance of the Courts.

5. It will be next observed that the Courts are precluded from hearing cases connected with the rent of land. Such cases may be, with advantage, referred to the Revenue authority, who is, even in the Regulation Provinces, constituted to a great extent the judge between landlord and tenant. It is

proposed that the principle on which the summary suit laws were enacted should be extended to the decisions of the fiscal department, as regards rent should be final, that the one year limitation should be enlarged to the ordinary term of twelve years, and that the revision of the Civil Court should be abolished. It has been long recognized that the fiscal department furnishes the most fitting tribunals for the adjudication of rent, and the same reasons which point to the severing of relations between the Civil and Fiscal authorities will authorize the subjection of the summary suits to the sole control of the Revenue Officers. To the same department may be referred, with propriety, the cases regarding boundaries and allotment of alluvial lands, (Clause 6,) and cases relating to public works and inundation canals, (Clause 14.)

6. With regard to the exception of taluquadaree and chowdrees' dues, it will be obvious that in their nature they closely approach to rent and may also be cognizable by the Revenue authorities. "Dhurut," and other bazaar collections, are in villages and qusbehs excepted, because they are precisely defined and fixed at the settlement, and may be best enforced by the Revenue authorities. In towns, these duties are ordinarily leviable for police and municipal purposes, and in that case are collected by an agency appointed by the Magistrate. But if in such cities there should exist other collections, besides the public town duties, they may become the subject of a civil suit.

7. In the Regulation Provinces, the Courts entertain claims for the *payment*, but not for the *grant* of pensions. It is now proposed to remove both kinds of claim from the jurisdiction of the Court; they are purely fiscal matters, and are best cognizable by their appropriate department.

Vide Macpherson, pages 30 and 31, and Con. 230, 12th Jan. 1816.

8. In regard to all rent-free tenures, conditional or temporary, questions relating to succession, inheritance or partition, will not be decided by the Courts, because they nearly affect the integrity and duration of the grant itself, which falls within the sole prerogative of the Government, to be exercised through its Revenue Officers. The realization of all revenues alienated by the State, in favor of individuals, may be properly conducted by the same authority which enforces the demand of Government on the landlord and of the landlord on the tenant. By the same authority also may be administered all trusts arising out of these grants, as public

endowments. According to the Mahomedan Code, the governing power was constituted a general trustee for all private endowments, but there is no reason why the Executive authorities should be charged with this duty. The trusts can be administered by the religious establishment kept for that purpose. It is proposed that the Courts should interfere only on a suit being preferred.

Macnaghten's Mahomedan Law, pages 69 to 72.

9. The clause which interdicts the Courts from entertaining questions relating to the boundaries of States, or of feudal territories, is conformable to the Regulations.

Macpherson, page 29.

10. An efficient machinery having been provided in the settlement for the investigation of all private rights and interests, which might exist in nuzool or other real property in the possession of Government, it became necessary to include this class of cases among the exceptions. The scale and rate of compensation for land, appropriated for public purposes, having been definitely fixed by Government, there need be no litigation on this head in the Criminal Courts.

11. In regard to the last exception, that portion of the clause which declares the Courts incompetent to take cognizance of fiscal proceedings, may be authorized by the reasons already adduced for the entire independence of that department; and that portion which prohibits the Courts from entertaining suits regarding the public acts of Judicial Officers is in accordance with the Regulations.

12. Those clauses relative to the various persons who may and may not be parties to suits will not require any comment, as they follow the Regulations. (*See* Macpherson's Civil Procedure, Chapters I. to V.)

COMMENTARY ON SECTION II.

EVIDENCE.

1. The main feature, in the Section on Evidence, is the principle that all kinds of evidence, without any restriction or reservation, should be taken, "*quantum valeat:*" certain witnesses and documents may not be very credible, but they are nevertheless admissible, and the Court will judge of the degree of credit to which they are entitled.

2. The tendency of all old Regulations has been to confine the range of evidence within unnecessary limits, which it has been the policy of modern Regulations to remove.

3. The rules that parties to a suit may bear testimony on their own behalf, that others interested in the suit may also give evidence, that the Courts are not restricted in their official cognizance to the proofs adduced by the suitors, but may seek for whatever evidence, from whatever source they think necessary, are to be found in the draft of an excellent Act, published in the *Agra Gazette* of 15th February 1853.

4. The obligation imposed on the Courts to procure, in suits for land, extracts from any records in the Revenue Registers which may relate to the ground in dispute, has been suggested by a statistical pamphlet on the District of Agra, published in 1848 by Mr. C. C. Jackson, Civil Service.

COMMENTARY ON SECTION III.

HINDOO AND MAHOMEDAN LAW AND LEX LOCI.

1. In accordance with the spirit of the fundamental Civil Regulations, it has been declared in Section III., that the Hindoo and Mahomedan Codes are to be followed *generally* in matters of civil right and social importance, not otherwise provided for, and not opposed to morality, public policy, or positive law, and *specially* in certain specified classes of cases.

2. Although the inhabitants of cities, the mercantile community, the emigrants from Hindoostan, and the wealthy and educated classes generally, follow the Hindoo and Mahomedan Codes; yet in many of the provincial Districts of the Punjab, and frequently among the agricultural tribes, there prevail local customs, more or less at variance with the ordinary Codes of oriental society. These customs are more peculiar in their nature, and more imperative in their authority, among those wild Districts which adjoin the frontier. Their observance is enforced with fanatical zeal, and their breach avenged with bloodshed.

3. A machinery has been provided for the ascertainment of the law, or the custom, in those cases which would be governed by either of them.

It is unnecessary to explain the hold which the Hindoo and Mahomedan Codes retain on the minds and affections of the members of those persuasions (including the Sikhs,) and the religious sanction with which they are invested, quite distinct from secular authority, and analogous to that of the Mosaic and Levitical Law. In regard to the Lex Loci on the frontier, it may perhaps be superfluous to urge the importance of understanding it on the attention of the Civil authorities, and to warn them that neglect, or violation of it, may be fraught with such consequences as crime and even rebellion.

4. But an explanation of the leading principle of Hindoo and Mahomedan Jurisprudence has been attempted; although it pretends to nothing more than the character of an epitome, or an abstract, still it may aid the Judges in testing the opinions of native lawyers and the awards of arbitrators. The former are apt to be careless and uninformed, and the latter venal, unless they stand in dread of the knowledge and discrimination which the Judge may be known to possess.

5. In the word of one, who was a great English lawyer and an oriental jurist :—"Perpetual references to native lawyers must "always be precarious and inconvenient, since the "solidity of their answers must depend on their integrity as well as their "learning, and at best, if they be neither influenced nor ignorant, the Court "will not, in truth, hear and determine the cause, but merely pronounce "judgment on the report of other men."

Sir W. Jones's Works, Vol. VIII., page 163.

6. There are, it is well known, several schools of Hindoo Law and Jurisprudence, each of which is marked by some distinctive tenets of its own. But these discrepancies do not affect the broad and fundamental principles of law, but chiefly relate to points of remote detail, such as do not come within the scope of a brief Code like the present.

7. In those Sections which, for the most part, rest on the basis of the Hindoo and Mahomedan Law, (chiefly Sections IV. to XI.,) references are given from which any further details that might be wanting in a particular case can be collected.

8. It may be added that (besides standard books which have been referred to) the Pundits and Mooftees of Lahore have been verbally consulted regarding those passages where the principles of Hindoo and Mahomedan Law have been embodied.

9. It may, perhaps, appear that in this Section too much latitude has been permitted to the Court's discretion, as regards the validity to be assigned to law and custom respectively. If, indeed, there were certain localities where the law was followed and certain other tracts and districts where custom prevailed, then it would be possible to frame a positive rule, that is, to lay down the law and define the custom, and then to declare that, in certain localities, the said law was to be in force, and that in certain tracts and districts the said custom was to stand in the room of law. Thus no discretion would be left to the Court, as to the respective jurisdictions of law and custom, nor as to their definition; again, although it might be uncertain, as to how far the law might prevail, and how far the custom, still if there were one fixed law and custom, a rule of secondary positiveness might be laid down. The law and custom would be declared, and the Court would be left to determine in what places, and among what classes, they were respectively to be enforced. But actually, neither the first rule nor the second can be absolutely prescribed. In point of fact it is not possible to declare in what places the law is to be in force and in what places it is to yield to custom. It prevails, more or less, every where, but exclusively nowhere. Nor is it possible to enunciate any one Lex Loci, for the custom varies in different places; unless indeed a separate Code were prepared for every District, so that two questions must be left open for the decision of the Court—*firstly*, whether in any case, or class of cases, law or custom is to be followed, and *secondly*, if custom, then what custom is to be selected. Certainty is indeed of vital importance in matters of civil right; nevertheless, it is not practicable, at present, to fetter the discretion of the Courts in either of the above respects: endeavours have, however, been made to narrow the inevitable uncertainty. The law has been declared in all matters of ordinary occurrence; and, as regards custom, although its shades and variations have not been described, still its broad distinctive features have been sketched. It has been prescribed that, in certain specified classes of cases, if any particular custom should be known to prevail, it may over-ride the law, but that in all other cases the law is to be enforced. This is a plain doctrine, intelligible both to the Judicial Officers and to the native public. And even this declaration is so far a gain; without it, the Courts might exclude law altogether or custom altogether, or might adopt one standard of custom to be followed invariably; and all three courses would be erroneous.

What custom prevails on such and such points, in such and such localities, is a question easy to be enquired into, and decided, in each individual case. The mode of enquiry has been prescribed, and in the great majority of cases the Courts will doubtless decide the question rightly. If in any case the Court should err, that is, if law should be enforced where custom ought to have been accepted, or *vice versâ;* or if one custom should be adopted where another custom ought to have been followed; then the appellate authority can set the error right; and lastly, it will be remembered that this discretionary power is not allowed in all classes of cases. Out of the twenty-two Sections, or heads of law, into which the First Part has been divided, the uncertainty is to be found only in seven, and even in them it exists but partially. In the remaining fifteen Sections positive rules are laid down throughout, to be observed on all occasions, without any deviation whatever.

It may be eventually practicable, as experience accumulates, to effect a codification of the Lex Loci in the Punjab, and to draw precise lines between the mutual confines of the various conflicting customs; but this will be a matter for future speculation.

COMMENTARY ON SECTION IV.

INHERITANCE.

1. The principles contained in this Section are to be found in Chapter II., Macnaghten's Hindoo Law; Strange's Hindoo Law, Chapter VI.; Colebrooke's Digest of Hindoo Law, Chapter VIII., and Chapter I., Macnaghten's Mahomedan Law, and in the translations of the Surajeah and Shureefeah, Volume VIII., Sir W. Jones's Works.

2. The differences between the Hindoo and the Mahomedan Codes have been placed, as much as possible, in juxta-position, for facility of comparison. Details regarding distant kindred and the succession of collateral branches have not been attempted. In cases of doubt, references could be made to the works above cited; but it is believed that the great majority of cases will be met by application of the principles now laid down.

3. Under the Regulations, questions of importance, regarding inheritance, are left exclusively to be determined by Native Law: neither in this Section is any innovation proposed. The only deviations are in those cases where acknowledged custom may have superseded the law. Several instances of such collision have been noted, namely, the exclusion of daughters and their descendants from inheritance, especially in landed estates; the equal partition between the issue of each wife of the deceased, and the partial assimilation of Hindoo to Mahomedan custom.

Regulation VIII. 1795.

It would be, perhaps, needless to point out the difference between the Indian and the English systems, and the resemblance which both of the Indian systems bear to some of the Continental Laws.

4. By the Hindoo and Mahomedan Law, various causes are allowed for exclusion from inheritance, (*vide* Strange's Hindoo Law, Vol. II. Chapter VIII., and Macnaghten's Hindoo Law, Vol. II. Chapter IV., ditto Mahomedan Law, page 21.) By the Mahomedan Law these causes are not numerous, comprising chiefly slavery, homicide, difference of religion and allegiance. But by the theory of the Hindoo Law, they are very numerous, including a variety of personal infirmities, both corporal and mental, and a variety of moral infirmities, vices and crimes, among which is included the non-performance of funeral obsequies. Many of these moral delinquencies would also involve degradation or expulsion from caste. But those persons, whose disqualifications consisted only in physical or intellectual infirmity, would be entitled to maintenance from the occupants of the heritage. In practice, however, most of these disqualifications have, for a long time past, been disregarded, (with the exception of such as involved expulsion from caste,) inasmuch as they virtually included every offence in jurisprudence and every disease in nosology, (*vide* Macnaghten, Vol. II., page 132.) But there are obvious reasons to doubt whether any of these disqualifications can be maintained, consistently with the spirit of enlightened legislation; and it has been deemed best to deny them all legal support.

COMMENTARY ON SECTION V.

SPECIAL PROPERTY OF FEMALES.

It will be observed that the peculiar property of females is rigidly guarded by both the Hindoo and Mahomedan Laws: wives may hold a "peculium" unknown generally to European Law. In this Section nothing is proposed contrary to the Native Codes, except where they may fall into collision with custom. The principles laid down are to be found in Chapter III., Macnaghten's Hindoo Law; Strange's ditto, Vol. I., pages 26 and 248; Colebrooke's Digest, Chapter X., and Macnaghten's Mahomedan Law, page 254.

COMMENTARY ON SECTION VI.

MARRIAGE, DIVORCE AND ADULTERY.

1. The provisions of the Section on Marriage, though they would appear sufficiently stringent, will probably fail to satisfy the wishes, or rather the prejudices, of certain classes, especially the population of some of the Hill Districts. There can never, of course, be any hesitation in denouncing the sale and barter of women. But among many classes, with some pretension to respectability, there prevails a system of exchanging girls, which (aggravated by the intrigues of professional agents who earn a livelihood by the traffic) ultimately produces the most mischievous effects. These exchanges, concerning, as they do, many families, and involving many couples, and thus ramifying into a great variety of complications, present the strongest temptations to fraud; cause women to be regarded as negotiable commodities; and are, in fact, quite as objectionable as regular money sales.

2. Among other classes again, the indirect giving and receiving of valuable consideration, (though not of actual cash,) on account of marriages and betrothals, introduce dishonest dealing, and sordid mendacity into these transactions, which, of all others, should, if possible, be kept free from such taint.

3. In short these practices lower the position of the women and corrupt the honesty of the men. On several occasions the Supreme Government, and the Home authorities, have evinced a resolve to check the progress of demoralization, and to enforce principles more worthy of civilized humanity; and it may be hoped that, as so many crimes of heinous atrocity have been more or less successfully repressed, also other practices which, though of lesser turpitude, are yet very prejudicial, may speedily be banished. Only let legal support be withheld from transactions connected with the exchange of girls and women, and from the giving and receiving of valuable consideration, and that system will rapidly die of spontaneous extinction. When people find that these transactions are not legalized, they will, for self-interest sake, cease to engage in them, and will revert to a more rational system. Independent of a better domestic morality, there will be less fraud, fewer disasters, and less individual misery.

4. The provisions of this Section, then, have been framed with the aim of affording those suffering from legitimate grievances, a redress, quick, sure, and thorough, and on the other hand, of discouraging illegitimate practices by withholding the redress they seek from those who are suffering under grievances for which they have only to thank their own unprincipled folly. Suitors of the latter class would desire a ratification of the promised exchange, and a delivery of the bartered goods, or else they would wish to have a betrothal enforced, or a marriage compulsorily solemnized. It is indeed doubtful, whether orders to such effect could be consistently issued by a British Court of Justice.

5. In the proposed rules, the chief deviations from the Native Laws are :—legalizing the re-marriage of widows among Hindoos, the rule regarding the amount of dower payable on divorce among Mussulmans, and the rules regarding the non-performance of betrothal agreements, and the breach of marriage contracts not accompanied by co-habitation.

6. The rules under the last head will alone require comment. The custom of betrothing and marrying infants is not to be applauded; indeed it is repugnant to European ideas that parents should make such agreements on behalf of their children, and it is difficult to condemn the children, if, when they come of age, they refuse to ratify such contracts; still the consequences of the refusal are embarrassing, and the custom of early betrothal and marriage is so deeply rooted in the native mind, that it cannot

be disregarded. If either of the contracting parents should break, or cause the child to break, a contract of betrothal, then of course he or she is liable to be cast in a suit for damages and indemnification; but if a contract of betrothal be broken by either of the children, then it is proposed to hold him or her blameless; the parent who made the contract ran a risk in making it, and must be responsible for the consequences of its non-performance.

7. But there remains a class of contracts of marriage between children undertaken by parents on their behalf, and which have not been ratified by co-habitation. If either of the children break the vow thus vicariously made, ought he, or she, to be held guilty of adultery, or be held blameless; or be singly cast for damages and indemnification, or be cast jointly with the parents?

8. Now, whatever the Native Law may declare, the child, in this case, is not morally guilty of adultery, and it is not proposed to subject him, or her, to the pains and penalties of that crime; but on the other hand, constituted as native society is, the child cannot be considered quite blameless, no positive injury is perhaps committed; still much disgrace and unhappiness is inflicted on the opposite party; and one who, knowingly, inflicts such disgrace, must give some compensation. The matter is much more serious than non-performance of betrothal, and the child cannot be freed from liability; but if the child be mulcted with damages, the parent, who was the original contracting party, is also liable. It has, therefore, been proposed that, in such a case, the child *and* the parent should be sued jointly.

9. If after co-habitation has ensued upon marriage, the vows are broken, then the adulterer or adulteress is solely amenable; the responsibility of the parent can no longer be enforced.

10. This clause, relative to adultery, is mainly intended to expedite and facilitate the civil remedy, which the law provides for those who have suffered from the crime of adultery. The numerical preponderance of men over women in this country renders the crime frequent. But although female principle does not stand high, and although adultery is common, still the mass of the people are by no means hardened to its consequences. It is the cause of three-fourths of the murders which are committed, and its impunity would conduce, more than any thing else, to render our rule unpopular.

11. The authorities for the doctrine of Native Law in this Section are Chapter VII., Macnaghten's Mahomedan Law; Chapter V., Macnaghten's Hindoo Law, and Strange's Hindoo Law, Chapter II. Vol. I.

COMMENTARY ON SECTION VII.

ADOPTION.

1. Adoption, among the Mussulmans, is of no more legal importance than in England. But among Hindoos, in efficacy and validity, it is analogous to the practice of the Romans and the Athenians, (*see* Macnaghten's Preface to Hindoo Law.) Under the Regulations the decisions of the Courts, on this head, are entirely guided by the Hindoo Law, and in the present Section no deviation is proposed. Some portions of the law are uncertain; indeed Sir W. Macnaghten declared, that there was no topic of Hindoo Jurisprudence more surrounded by doubts and difficulties. Fortunately, however, the obscurities hang over matters of secondary importance, such as to whether adoption must take place at an early age, whether a widow can adopt a second son on the death of the first, and whether the adopted son is entitled to inherit the property of his foster father's collateral relations. A question on each of these points might be answered in the affirmative; but disputes on such remote points are not likely to arise in our Courts, (the formalities of adoption not being strictly observed in this Province,) and if they should arise, they will not be perplexed by Pundits, or disturbed by the doctrines of rival schools.

2. The authorities for this Section are Colebrooke's Digest, Vol. III. Chapter IV. Section 8; Macnaghten's Hindoo Law, Chapter VI., and Strange's ditto, Chapter IV.

COMMENTARY ON SECTION VIII.

MINORITY, PARENTAL AUTHORITY, AND BASTARDY.

1. In the Section on Minority, the policy of the English Law, and of the Regulations, has been followed in prohibiting the next heir from taking charge of a minor, regarding whom he may be presumed to have an adverse interest.

See Macnaghten's Mahomedan Law, Chapter VIII., and Hindoo Law, Chapter VII.; *see* Strange's ditto Chapter III., on the "Paternal Relation"; *see* Macnaghten's Preface to Mahomedan Law, page xxix; and Regulation of 1800.

2. The distinction between the guardianship of the person and the management of the property is also known to the Regulations, and the Rules now proposed, for the appointment of guardians and managers, are generally conformable to the practice of our older Provinces, except that there is no specification regarding minors who may be proprietors in joint undivided estates.

3. The rules, regarding the relative powers and responsibilities of guardians and minors accord both with the Regulations and with the Hindoo and Mahomedan Laws.

Marshman, pages 621-627; Macnaghten's Mahomedan Law, pages 54-55; Macnaghten's Hindoo Law, pages 106-112.

4. The interference of Courts of Justice, for the protection of minors, is sanctioned by the ancient law of India, among all persuasions. By all Native Codes, the guardianship of the orphan is a duty of ruling power.

5. The doctrine of Hindoo and Mahomedan Law, regarding the mutual responsibility of parent and child, for each other's maintenance, as given in Clause 14, is supported by the following references :—Strange's Hindoo Law, Vol. 1., pages 66-67, and Macnaghten's Mahomedan Law, Chapter VIII.

6. The rule laid down in the clause regarding the parental authority and filial obedience accord, generally, with English and Indian Laws. It will be seen that in Clause 11, it is proposed to set aside the authority, usually exercised by parents, in cases where a child of sound moral understanding has been tyrannically prevented from adopting any persuasion or doctrine which may offend the prejudices of the relations. In an age when education of all kinds is being diffused, such cases may occur, and it is expedient that some provision should be made for them. With this exception parental authority, an influence much venerated and prized by the natives of all classes, has been strictly maintained.

7. The authorities, marginally* referred to, will justify the view taken in Clauses 15 and 16, touching the doctrines of the Mahomedan and Hindoo Laws on the subject of illegitimacy.

* Macnaghten's Mahomedan Law, Chapter VII.; Preface, pages 23-25, Strange's, Vol. I., pages 40, 68 to 71; Macnaghten's Hindoo Law, page 61.

8. The only debateable point is the question whether the father or the mother should, primarily, be entitled to the guardianship and education of an illegitimate child. It has been stated in Clause 18, that this right is generally supposed to pertain to the mother and her relatives, in preference to the father and his relatives, although there is reason to believe that

neither the Hindoo nor the Mahomedan Law contain any specific rule on the matter. Enquiry does not show that the natives of this Province have any decided feeling or opinion either way; for the most part they are quite as ready to acquiesce in the father's right as the mother's. The English Law on the point is well known and need not be further alluded to. On the whole it would seem, that in the event of a dispute between the parents, the course prescribed for a Court should be that which natural justice and propriety may dictate.

9. In the case supposed, the Court is called upon to determine the party, by whom a certain child shall be trained and nurtured. Now it is surely just and right that this decision should be formed with a regard to the temporal, moral, and if possible, even the religious, welfare of the child. If this be so, then it would follow, that the Court ought to decide in favor of that party who might appear best qualified for the charge. It cannot be said that, in all cases, the father would be better qualified than the mother, but in the great majority of cases he certainly would. In many cases it would happen, that while the father was exceedingly well qualified, the mother would be eminently disqualified. The latter might be in a wretched position, (in all circumstances she must be more or less degraded,) while the former might be a person of wealth and education. In these cases there is hardly room to doubt on which side the best interests of the unfortunate child really lie. That the child ought to be consigned to inferior keeping, or to something worse, when the father is not only willing but anxious to supply a better education, is a principle which it would be difficult to defend on the ground, either of abstract morality, or practical expediency. The mother can have no well-founded right to abstract the child from the better keeping of the father, to bring it up in at least an inferior sphere, and perhaps, to teach it to follow her own example. It is, therefore, proposed that the Courts be authorized to consign the child to that parent who is likely to prove the best guardian.

COMMENTARY ON SECTION IX.

PARTITION AND DISPOSITION OF PROPERTY.

1. At the outset in this Section the restrictions on the disposition of ancestral property, in vogue among Hindoos, by both law and custom, and among Mahomedans by custom, if not by law, have been briefly stated. It is desired that transfers, which may take place for really good reasons, and which may facilitate the investment of capital, should be maintained. But it is not proposed to abrogate the limitation, imposed by law and custom, on dispositions resulting from caprice, prejudice, or enmity. These restrictions, whether they square or not with political economy, are yet intertwined, as it were, with the frame-work of society, as at present constituted. In a country where poligamy prevails, and village communities flourish, they have some positive advantages. To annul, or even to materially relax them, would be a task which it is not proposed to undertake.

2. In the 5th Clause of this Section, it has been thought expedient to affirm the absolute right of every sharer to partition, because in our older Provinces, the exercise of this right, in opposition to the wishes of the other sharers, has sometimes been disputed.

3. The authority for the following clauses regarding partition among their sons, by Hindoo fathers, during their life-time, is to be gathered from Chapter IV., Macnaghten's Hindoo Law; Colebrooke's Digest, Vol. III., pages 1 to 75, and Strange's ditto, Chapter IX. The substance of these clauses is of some importance, but there is only one point which requires comment.

4. It may seem an anomaly, that if through the energy and enterprize of one or more, out of several sharers, a joint patrimony should have been vastly improved or rendered the means of extensive acquisitions, the idle brethren should share together with the industrious. But Sir W. Macnaghten, in his Preface to Hindoo Law, has shown this custom to be an equitable one, under the existing constitution of Hindoo society, whereby some brethren stay at home to guard the house and family, while the others go forth to seek their fortunes in the world. For a detailed explanation the Preface above alluded to should be consulted, pages 13 to 15; also Strange's, Vol. I., page 197.

5. The spirit of the Regulations has been followed in those clauses which relate to partitions of land effected by the Revenue authorities, but no distinction has been made between joint undivided estates and other kinds of landed property.

COMMENTARY ON SECTION X.

GIFTS.

1. The authorities for this Section are Chapter V., Macnaghten's Mahomedan Law; Macnaghten's Hindoo Law, Chapter IX., (on contracts,) *passim*; and Colebrooke's Digest, Vol. II. Chapter IX.

2. It will be observed that by the Mahomedan Law a power is allowed in regard to gifts, which is not extended to Wills, and is not permitted by the Hindoo Law. This power, however, is liable to be modified by custom, and it will be borne in mind that a mere deed of gift, without possession, is void.

COMMENTARY ON SECTION XI.

WILLS AND LEGACIES.

1. As the Hindoo Code does not contain any distinct or direct provisions with regard to Wills, (Strange's Hindoo Law, Vol. I. Chapter XI.,) the substance of this Section is chiefly taken from Chapter VI. of Macnaghten's Mahomedan Law.

2. The peculiar provision in the Mahomedan Law, that a proprietor cannot dispose, by Will, of more than one-third of his property, is, however, shown by Macnaghten, in his Preface, to have been known to some European systems.

COMMENTARY ON SECTION XII.

CONTRACTS.

1. The four Sections on Contract, Patnership, Agency, and Bailment, respectively, may be considered as belonging to the same branch of law.

The subjects which they comprise are not treated of at length in the Regulations of Government and the Constructions of the Courts. For those doctrines, borrowed from European Law, of which an outline has been attempted, an easy reference can be made to the standard works on Contracts, by Mr. W. Story, of America, and H. T. Colebrooke, the well-known Indian Jurist. But, on some points, the principles of European Law have been modified, with reference to those of Hindoo and Mahomedan Law, in order that they may become adapted to Indian society. The provisions of the Mahomedan Law, regarding contracts, are generally equitable. That branch which relates to sales, has been the subject of at least one elaborate treatise. The contract law of the Hindoos has been fully discussed in the works entitled the "Elements of Hindoo Law" and the "Considerations of the Hindoo Law," and has been pronounced, by good authority, to be the most satisfactory portion of their jurisprudence.

Story, Part I. Chapter. II, Macnaghten's Mahomedan Law, Chapter VIII, and Hindoo Law, Chapters VII and IX., page 103.

2. Those clauses in the Section on Contracts, which describe the causes whereby contracts are vitiated, and the conditional validity of agreements made by, or with, minors, married women and others, not ordinarily competent to contract, are common to both the English and Indian system. It will be seen that Hindoo and Mahomedan married women are, as regards their special property, freed from their ordinary inability to contract.

3. The clause which relates to the partial validity, and partial performance, of contracts, is in consonance with the Native Codes; and the principle is recognized in English Law, by the distinction drawn between "*severable*" and "*entire*" contracts, and may be enforced by action for "*quantum meruit.*"

See Story, Sections 17 to 19.

4. The comparative disregard of the "consideration," advocated in the next clause, is also in accordance with the Indian system, but not with English Law. In England, the consideration, in cases of simple and parole contract, is declared to be the "*very life of the agreement.*" Considerations are classified into "valuable" and "insufficient," and each of these two classes are again separated into a variety of sub-divisions. These distinctions, however well founded, are perhaps too subtle to be appreciated by Punjabees, and it is proposed to dispense with them. The necessity, however, of enquiry into the consideration, whenever the genuineness of the contract may be suspected, has been enjoined.

Story, Chapter IV.

5. The clause in which formalities of contract are declared unnecessary has reference to the English Law, which places specialities, or contracts under seal, on a different footing from simple or parole contracts. The only distinction which it is proposed to maintain would consist of the relative degree of credibility attachable to instruments of greater or less formality and solemnity.

Story, Chapter I.

6. The principle of the admissibility of evidence, in explanation of contracts, is in consonance with English Law.

Story, Chapter VIII.

7. The last clause refers to those cases of non-performance of contract which are cognizable by Criminal Courts under Regulation VII. of 1819.

COMMENTARY ON SECTION XIII.

SALES.

1. In the Section on Sales, the first seven clauses, regarding verbal and written contracts, the effect of earnest and ratification, the risk of the seller and buyer respectively, the nature and conditions of delivery, the lien of the seller and his right of stoppage *in transitu*, the determination of the price, and the consequences of defective title, are in accordance with the custom of this Province, and do not differ materially from the English Law. In some respects they precisely agree with the Hindoo Code. (*See* Colebrooke's Digest, Vol. I., pages 451 to 483, and Strange's, Vol. I., pages 302 to 305.)

2. The 8th Clause is marked by the absence of the legal maxim of "*Caveat emptor.*"* The rule finds no place in either the Hindoo or Mahomedan Codes, and is not followed in Indian practice. It has, therefore, been thought expedient to maintain the responsibility of the vendor for fair dealing, and to give the vendee an opportunity of procuring, within a reasonable time, a reversal of the sale, if he should find himself to have been deceived, or if he should discover a defect previously concealed.

* Macnaghten's Mahomedan Law, Preface, page xiii., Chapter III.; Macnaghten's Hindoo Law, page 1203; and Strange's Hindoo Law, page 306, on rescission of sale.

3. The 2nd Clause is aimed as a preventive at the custom, which sometimes prevails, of proprietors evading liability, by recording their property in fictitious names, (Ismfurzee,) and the rule is supported in Marshman's Civil Guide, page 62.

4. The chief point in this Section is the declaration of the right of pre-emption. The right is well known in both the Hindoo and Mahomedan Law, and it has never been disallowed by any Regulation. But in our older Provinces, as the la wfurnishes no means or machinery for fixing an equitable price on the property about to be sold, the object of the maxim is almost invaribly frustrated by the seller imposing an exorbitant price, which no coparcener could pay, and which even the proposed purchaser is not expected to give. Virtually any co-partner can, notwithstanding the rule of pre-emption, sell, if he please, to a stranger, by fixing a nominal valuation. Now this objection has been obviated by providing a method whereby a proper price may be fixed, which price the community, or any member of it, will have the option of purchasing at, before the lot can be sold to a stranger.

Macnaghten's Mahomedan Law, Chapter IV.; Hindoo Law, Vol II. Chapter II.
Note.—There is, however, some doubt in the Hindoo Law, but the custom in the Hindoo village communities is undoubted.

5. The conveyance of landed property is doubtless somewhat clogged by this rule, and it may be difficult, on economic considerations, to defend such restrictions, but the rule is an ancient one, and endeared to the rustic population; and for social and political reasons, for the sake of preserving the integrity of village communities, it is thought fit to place in their hands a power of checking the intrusion of strangers. To rpevent quarrels between neighbours, the same rule has been extended to cities where the custom of pre-emption may be known to prevail, and also to joint undivided properties, in order that strife may not be unnecessarily introduced into families. It is hoped that these provisions may greatly mitigate the apparent hardships of the compulsory sale of landed property for debt, a practice which, though undoubtedly necessary to be introduced, was not in general force previously to our rule.

6. But the rule is only applicable to *permanent* transfers. In order that money may circulate freely, that capital may be invested easily in landed securities, and that land-holders may procure loans and keep running accounts with the bankers, it is deemed advisable to leave temporary transfers unfettered.

COMMENTARY ON SECTION XIV.

MORTGAGES.

1. THERE is nothing in the Section on Mortgages which demands special notice, except the full scope which has been given to the operation of the Lex Loci, and of agreements made between the parties. In some parts of the Punjab, and especially in the Trans-Indus Territories, the conditions annexed to mortgages are peculiar, and may be thought severe towards the mortgagor. Nevertheless, if mortgagors understand them, and choose to mortgage their property accordingly, there is no injustice in their enforcement. The prudential reasons for abstaining from opposition to local customs, on the Frontier, have been already pointed out.

2. The description of the several sorts of mortgage is partly founded on the definition given at page 38 of Mr. Macpherson's work. Further details, regarding the enforcement of foreclosure, and of redemption, may be found in the Section on Procedure.

COMMENTARY ON SECTION XV.

AGENCY.

1. THE principles laid down in the Section on Agency are chiefly taken from Chapter I. Part II. of Mr. Story's book. It is believed that they are equitable, and adapted to cases connected with Gomashtas and Mookhteears. They have been affirmed by the Commercial authorities of Umritsur and Lahore. Several matters, in connexion with this subject, have been incidently touched upon in other Sections, especially in the Section on Partnership and Bills of Exchange.

2. The principle given in the last clause but one, that principles may enforce agreements made with their agents by others, has been affirmed in page 656 of Marshman's Civil law.

COMMENTARY ON SECTION XVI.

BAILMENT.

1. THE Section on Bailment is mainly based on Sir W. Jones's lucid and conclusive essay on that subject. The principles which are borrowed from that treatise are shown, by the learned author to be generally in accordance with the best systems of European and Asiatic Law, and a reference to the Hindoo and Mahomedan Codes shows them to be adapted to Indian society.

See Sir W. Jones's Works, Vol. VIII.

2. Of the several branches into which the subject naturally separates itself, only one, *viz.*, pawn or pledge, offers matter for serious doubt. On this head, a question arises as to the relative degree of loss and responsibility to be borne by the pawner or pawnee. If the article pawned should be lost without any fault of his, then he is not resposible, the debt remains as it originally stood, and the pawner is held to have suffered "*damnum absque injuria.*"

3. On the other hand, by the Mahomedan Law, the pawnee is responsible. It is held that *amissio pignoris liberet debitorem;* that the loss extinguishes the debt; and that, moreover, if the value of the lost pledge exceeded the amount of the debt, the pawnee must re-imburse the pawner accordingly. This rule, Sir. W. Jones stigmatizes as contrary to justice and reason, and to the prevailing tendency of other Codes; but Sir. W. Macnaghten strenuously defends it in his Preface to the "Principles of Mahomedan Law." The two main arguments are, that the pawner is not in justice bound to pay a debt twice over, for which he had already given ample satisfaction, and, on the other hand, that in an engagement for their reciprocal advantage, each party should be saddled with corresponding liabilities.

Sir W. Jones, page 447, Gentoo Law, Chapter I. Section I.

Macnaghten's Preface, Mahomedan Law.

4. Sir W. Macnaghten's sentiments appear to be applicable to Indian society and not destitute of justice. In India, deposited goods are not unfrequently tampered with, and concealed or made away with under a false pretence of theft; stimulated burglaries are not unfrequent; and, notoriously, the first question which obtrudes itself on a police authority is not so much who is the criminal, but whether the crime was committed at all? Such cases may be rare in Europe, but in this country suspicion hangs over the

loss of a pawn alleged to have happened without any fault of the pawnee. Special enquiry has been made as to the custom and feeling on this subject in the Punjab; without doubt the pawnee is considered responsible for the loss or injury of the pledge, whether he be in fault or not. It is, therefore, proposed to maintain a reponsibility, upon the faith of which the pawner pledges his property, and which the pawnee believes himself to have assumed in accepting the pledge. But the Court may well possess a discretionary power of mitigating the pawnee's loss, if there should appear special grounds of extenuation; if there should be doubt, it will weigh rather against the pawnee than for him; and the "*onus probandi*" will rest with him, to show that he has vigilantly guarded the pledge which has been lost, stolen or injured. By English Law it is the duty of the pawner to show that the pawnee has been negligent or fraudulent, but in this country, for the reasons already given, it seems advisable that the burden of proof should be thrown on the pawnee.

Story, Section 433.

COMMENTARY ON SECTION XVII.

ON PARTNERSHIP.

1. The importance of the law of partnership, in a province which may boast of being the high road for the commerce of Central Asia, and of containing one of the first mercantile cities in India, is manifest. The rules laid down in this Section closely follow the custom of trade, and have been prepared in consultation, throughout, with leading merchants. It has been well said to be a maxim of the present age, "that the law, while it should take due precautions against fraud, ought to leave its subjects to form their own engagements, on such conditions, and in such manner, as their own experience teaches them to be for their own advantage." If then this Section be really in accordance with the mercantile practice of the Punjab, no objection need arise from its variance, in some material points, with the English Law.

2. Joint and several responsibility and obligation "*in solido*," as known in England, are not, usually, elements in the commercial partnerships of this Province. Each partner is ordinarily liable for his share, and no more, in the absence of an express agreement to the contrary, which indeed is rarely or never made. The doctrine of *limited liability*, therefore, is a

prominent feature in the present Section. The limitation is but just to those who engage in partnership on this universally implied condition. It certainly cannot be unjust to those who deal with, and give credit to, firms on this invariable understanding; it is also calculated to stimulate investment of capital.

3. This doctrine, though not yet accepted in England, is by no means opposed to the laws of many nations. It was partially recognized by the old Civil Law; it was known to the laws of the maritime cities of the Mediterranean during the middle ages; it was embodied in the original Commercial Law of France; was re-produced in the Code of Napoleon, and was thus spread through all those nations which fell under the sway of the Empire. Though it never took root among the Hanse Towns, nor among the Northern regions, yet it was established in Central Europe and has been transplanted into America.* It was once sanctioned in Ireland; has been taken up by the Society for the Amendment of the Law, and is now being considered by a Committee of the House of Commons; so that there is nothing in European precedents to hinder the declaration of what may be deemed a vital principle to the Commerce of this Province.

4. But the limitation has been fenced in against abuse, by the injunctions urged upon firms to notify the terms of partnership, so that creditors may distinctly know whom they are dealing with; and by the caution to dealers to ascertain these particulars from chowdrees of bazaars, and to inspect books which exhibit the details of partnership. In those countries where limited partnerships are legalized, such as France and America, there are stringent regulations regarding registration and notification; in this country also publicity is afforded, in what may be called a social style; the formation and dissolution of partnership is signalized by a feast to constituents and mercantile friends, and by the distribution of sweetmeats among the neighbours.

5. No partner can escape from his just liabilities, by ostensibly taking a large part in the operations of the firm, and then declaring, at the time of reckoning with the creditors, that by the deed of partnership he owned but a fractional share; for the principle has been borrowed from the English Law, that the private agreements of partners do not necessarily limit their public liabilities. A partner indeed will be liable for his share, but this

* *See* a collection of valuable and interesting facts on this subject in the *Law Review* for May 1849.

share will be that which he ostensibly assumed, and which the creditors had reason to suppose he possessed. The ultimate liability of dormant partners has also been explained in Clause 10.

6. It will be seen that, in Clause 9, there is one exception to the principle of limited liability in the case where co-partners closely related, and trading on undivided ancestral property, are jointly and severally responsible. This rule is well understood by merchants, and is taken from the Hindoo Law, as expounded in Chapter III. Vol. II. of Colebrooke's Digest.

7. The provisions given in Clause 13, regarding the retirement of a partner and his exemption from further accountability, may seem peculiar. In England, a retired partner does not cease to be responsible for debts contracted while he was a member of the firm, whereas in this province his final quittance releases him, not only from his partners, but also from the creditors of the partnership. No harm can result from this recognized custom, provided that the retirement is effectually notified to the public, and that the creditors have full opportunity of objecting to the release, for both which matters the clause in question contains precautions.

8. The method of paying off private and partnership debts, in the event of insolvency, as given in Clause 15, differs somewhat from the English system, but it is nevertheless equitable and is usually practised.

9. In the classification of partners the terms "gerant" and "commandite" belong to the French Law. The definition of partnership, the powers of a partner as general agent for the firm, the special restrictions of general power, the distinction between private and partnership assets, are in accordance with English Law. The rule in Clause 11, regarding the settlement of individual disputes between partners, is borrowed from Regulation Law.

10. No specific principles regarding partnership have been affirmed in the Regulations. In one case it seems to have been decided, that when several proprietors had jointly executed a mortgage, no individual proprietor can redeem his share singly, though certainly he might do so, under the Hindoo and Mahomedan Law. In Clause 12, it is proposed to give him this power.

Marshman's Civil Guide, page 602.

COMMENTARY ON SECTION XVIII.

BILLS OF EXCHANGE.

1. INASMUCH as the Punjab contains several Marts in which the Bill transactions are very important and extensive, (in the City of Umritsur, alone, they amount to five lakhs of Rupees per mensem, or half a million sterling per annum,) and as the subject forms an integral portion of Commercial Law, which is likely, more and more, to come before the Courts, it has been deemed indispensable to lay down some rules to aid both judges and arbitrators in deciding cases of this nature.

2. The method by which this Section has been prepared was briefly as follows :—The main principles of the English Law on Bills of Exchange were first collated and explained to the chief mercantile men of Lahore, and thus the fundamental differences between that system and the custom of these Provinces were elicited. At length a vernacular draft was prepared, which might be fitted for the consideration of the Commercial authorities at Umritsur, whither it was accordingly sent. The leading merchants of that city then carefully examined each clause of the proposed draft, making such emendations, corrections or additions, as they thought proper, and appended a comment on the whole. Several of them have also been consulted verbally. The amended rules have now been drawn up in English. It may be believed then, that this Section represents the opinions of the first Commercial authorities in the Punjab, of men whose prosperity may mainly depend on the practical working and local adaptability of the rules in question. They had every motive to give good advice, and that they are competent to do so, cannot be doubted. It is hoped, therefore, that the principles embodied in these rules may be received with some confidence, although in many respects they differ from the law and practice in England. In what these differences consist will be briefly explained.

3. To English ideas, a draft payable to a particular party, or his order, and transferable only by a formal endorsement, is more efficacious, more secure against theft, loss, or fraud, than a draft payable to bearer, and transferable by mere delivery from hand to hand. But among native merchants, the bill payable to bearer, (Shahjog,) is most in vogue and is most highly esteemed. The vast majority of bill transactions are in this

form. But these bills are either current betweeen parties acquainted with each other, or of known standing, or else they are transferred and cashed *only on security*. It is the safeguard of security which occasions the preference shown to this form of bill over others; and it evidently does remove the many objections which would otherwise arise.

4. This well-understood custom of security justifies the unusually heavy liability thrown, in Clause 4, on the acceptors, payers, and receivers of bills. It cannot be too strongly impressed on them, that if they omit to demand security, they do so at their own risk. This precaution may be inconvenient to holders, nevertheless it is absolutely essential to the success of a system which has been established by mercantile custom beyond the powers of change. Unless fortified by security, the system of "Shahjog" bills would introduce fraud, uncertainty, accident, and confusion into the intercourse of trade.

5. Clauses 8 and 9 are corollaries of the proposition above stated. The thief or finder of a Shahjog bill cannot transfer a title against precedent parties, consequently the innocent holder, who may have obtained it on good consideration, or the drawee who may have cashed it in good faith, are still responsible to the rightful holder. A more severe responsibility is imposed on them than would ordinarily be enforced in England, and it might, at first sight, appear unfair that they should lose their money. But they are supposed to have taken adequate security; if they have not, then they must bear the consequences.

6. In England a party receiving a bill is under an implied obligation to present it, at the proper time and place, to the proper person, and neglect in any of these respects may exonerate the drawer from responsibility. It will be seen from Clause —— that in these provinces considerable lenity is shown to the holder in regard to the time of presentment, and that the drawer is made to suffer for the holder's negligence. Still it is well understood by the drawer that the responsibility rests with him, and being on his guard he can of course preserve himself from risk. It is not material which party is specially bound to be vigilant, whether the drawee, the holder, or the drawer, provided that the responsible party knows his responsibility, and can take measures accordingly. The clause in question distinctly declares the responsibility, and conveys a positive caution to the drawer. It is obviously better to legalize and define a responsibility, sanctioned by custom,

although peculiar, than to transfer it to others not accustomed thereto, in deference to notions drawn from other countries.

7. The provisions in this Section regarding the terms of usance; the extent to which illegal consideration can invalidate a bill; the mode of endorsement, acceptance and payment; the immediate notification of the loss or dishonoring of a bill; the power of agents on bill transactions; the mode of suing and obtaining decrees against the antecedent parties to a bill—are believed to be mainly in accordance with the English Law.

COMMENTARY ON SECTION XIX.

DEBTS, INTEREST, MESNE PROFITS, AND INSOLVENCY.

1. In the Section on Debts, Interests and Mesne Profits, the clause relative to the liability of heirs is based on Macnaghten's Mahomedan Law, Chapter XI., Macnaghten's Hindoo Law, Chapter IX., page 127, and Strange's ditto, Chapter VIII., entitled "Charges on the Inheritance." The order in which proceedings should be taken against principals and sureties is specially fixed in the Hindoo Law. (*See* Strange's, Vol. I., page 301.)

2. The restrictions on the rates of interest, commonly termed "Usury Laws," have been omitted. The omission is proposed with some diffidence, because these restrictions are still maintained in the Regulations. But it is well known that many eminent jurists have denied the expediency of Usury Laws, both in regard to theory and practice. The laws have been abolished in England piece by piece, and the last remnant of them may be expected speedily to perish. Many able Officers in the Regulation Provinces doubt the efficacy of such restrictions.

3. The law is certainly ineffectual, because it can be, and constantly is, evaded. A creditor who desires to take interest in excess of that allowed by law causes the debtor to execute a bond for a greater amount than that actually lent, and thus illegal interest on the lesser sum really lent is made up by legal interest on the greater sum nominally lent. A law which can be evaded with perfect impunity is always deemed objectionable. But if its evasion offer not only a temptation, but a strong inducement to fraud, then it is unmitigatedly injurious. It not only fails to prevent people from doing what is inexpedient, but it absolutely urges

them to do what is wrong. There is no reason why trade in money should be restricted when all other branches of trade are free. There is nothing immoral in a high rate of interest; a man may make the best profit he can on money as upon any other article of exchange or commerce. But even if usury *were* immoral, it could not be prevented by "Usury Laws." The only effect of Usury Laws is that they introduce immoral elements into pecuniary transactions, which would not otherwise have existed.

4. If there are *no* Usury Laws, we have usury without fraud and with free circulation of capital. If there *are* Usury Laws, we then have the forbidden usury all the same, but we also have it associated with fraud and with hindrances to the investment of capital in loans.

5. It is, therefore, recommended that the Court should first regard any explicit and *bonâ fide* agreement entered into by the parties, or in absence of that, the custom which would naturally govern that class of transactions to which the case in question may belong. Any thing like oppression or extortion would of course be discouraged, and the Court would extend its protection to an unsophisticated debtor, who might appear to have fallen into the hands of an astute and grasping creditor: this has been provided for in Clauses 5 and 6.

6. The awarding of mesne profits is authorized by the civil practice in our older Provinces. (*See* Marshman's Civil Guide, page 600.) The incorporation of interest and mesne profits with the original claim is based on the same authority. (Marshman, pages 592 to 601.)

7. The objects contemplated by the rules of insolvency are—

8. *First,*—That an insolvent, of whatever class or profession he may be, having surrendered his person to the Court, and also his entire property, in order that it may be equitably applied to the liquidation of his debts, and having satisfied the Court and his creditors that he has endeavoured to discharge his liabilities, and has been innocent of fraud, concealment, or gross misconduct, may be released from personal distress and confinement, and pursue his avocations unmolested, though not released from the obligation of payment.

9. *Second,*—That those creditors, who may apprehend that the insolvent's property will be made away with, or injured by the insolvent himself, or unduly appropriated by one or more of the creditors to the prejudice of the others, should be able to move the Court for the insolvent's

arrest and detention on bail or in custody, in order that he may be compelled to make a full disclosure of his circumstances, and to surrender his property, to be administered by the Court for the general benefit of the creditors at large.

10. These rules have been approved by commercial authorities, and benefit is anticipated from them. It is believed that they contain the spirit at least of the recent Insolvency Laws in England. At present cases relating to bankruptcy and insolvency are summarily settled, with more or less efficiency, by the chowdrees of traders and bazaars; but they have no means of checking evasion on the part of the debtor, or self-interested proceedings on the part of individual creditors; and misconduct on either side goes unpunished.

COMMENTARY ON SECTION XX.

LIBEL.

1. In the Section on Libel, permission has been accorded to the defendant to plead that the statement complained of is true and is for the weal of the public or of some individual. That these pleas, if established, should be sufficient to rebut the charge, is a principle sanctioned by recent alterations in the English Law.

2. A question next arises as to how far a libellous statement, uttered in a Court of Justice during the progress of a trial, civil or criminal, is actionable. If in order to defend a suit, or conduct a cause, a party should deem it necessary to reprobate another, and should be debarred from doing so by the fear of an impending action for libel, the course of justice would be impeded. On the other hand, it would be a concession to malice, that a wanton libel (all the more damaging for being published in a Court of Justice) should be protected under the tolerable pretext of having been uttered during the progress of a trial. The true test of the libel is the relevancy, or otherwise, of the statement to the matter pending before the Court. Of this relevancy, the Judge, before whom the action for libel is brought, can decide. If the statement was relevant, the utterer is entitled to protection. If it was not, then the incident of its having been made in a Court of Justice will not deprive the injured party of redress. This

principle seems partially admitted in the Civil Law of the Regulation Provinces. It is at all events laid down that libellous expressions, and during the course of a Judicial proceeding, are not actionable; whether they would be actionable if irrelevant is not so clear. But it may be inferred that they would. That the fact of the statement having been already punished, criminally, does not bar civil damages, is an admitted principle.

Marshman, page 493.
Macpherson, page 122; Marshman, page 493.
Macpherson, page 26; Marshman, page 497.

COMMENTARY ON SECTION XXI.

CANONS REGARDING LANDED PROPERTY.

1. It has been deemed expedient to offer a brief summary of Judicial principles, relative to landed property held by village communities. In many Districts questions of this nature will have been decided at the settlement, and many essential matters arising out of landed property have been already provided for in preceding Sections; as for instance, the inheritance of it in Section IX.; the partition of it in Section X.; the sale and mortgage of it in Sections XI. and XII.; still there would be some blank, unless there were some description of the peculiar aspect which landed property bears when attached to a village and owned by a brotherhood. This short series of canons is not of course intended to be an epitome of a Revenue system. Those fiscal maxims only have been selected, which are in themselves Judicial, or which are calculated to affect Judicial decisions.

COMMENTARY ON SECTION XXII.

MISCELLANEOUS.

1. The concluding Section comprises various minor topics which could not be included in the preceding Sections. It was not thought expedient to encumber the First Part with a long array of small Sections; and those matters which were not worthy of separate notice have been compressed into one general Section. Few of these subjects will require any detailed comment

2. In the clause relative to caste, the species of injury which is rendered actionable is not an uncommon mode of wreaking malice. It is usually

punished by the Criminal Courts, but cases may arise in which civil damages would be the fittest remedy.

3. The clause on copyright is taken from Act XX. of 1847. The definition of lien is borrowed from the English Law ; the rules on that subject are conformable to custom. The 3rd Clause on guarantee does not require remark. The Hindoo and Mahomedan Laws contain various provisions on this head ; but they are not of practical importance, and have not been incorporated.

4. The local custom has been followed in the provisions laid down in Clause 4, relative to insurance. Disputes on this head rarely arise ; indeed the system almost precludes them, as the goods are usually insured above their value and given over to the insurer. The party in whose keeping the property is has no motive to injure it ; on the contrary, he has every inducement to provide for its safety. The owner of the goods protects himself against the insurer by securing a valuable policy, and the insurer protects himself against the owner by taking charge of the goods.

5. The rules regarding religious establishments are in general accordance with custom and with the Hindoo and Mahomedan Law. *(See* Macnaghten's Mahomedan Law, Chapter X., and Colebrooke's Digest of Hindoo Law, Vol. II.)

PART II.

COMMENTARY ON PROCEDURE.

PART II., on Procedure, is based upon the Punjab Rules, promulgated shortly after annexation. The modifications now proposed are such as subsequent experience of the country and the people, their wants, feelings and customs, have suggested. The points will be indicated in which each Section of the new rules differs from the corresponding Section of the former series, and reasons will be given for the additional details which have been inserted.

COMMENTARY ON SECTION I.

JURISDICTION.

1. IN the Section on Jurisdiction the first point worthy of remark is the appointment of Tehseeldars to act as subordinate Judges. The precise determination of the jurisdiction, to be entrusted to these Officers, has been left to the local authorities, with certain general limitations. Ordinarily they will try all suits of a value less than Rupees 300 within their Tehseeldarees. Within these limits, also, they will be allowed to receive petitions of plaint and to institute suits, and to perform various accessory operations in suits beyond their competency, for the convenience of parties concerned therein. But it is not proposed that they should conduct the entire enquiry in these latter cases, merely sending up the record for the orders of their superior; otherwise too great a burden and trust might be thrown on them. Their appointments have been designed for the relief, not only of Provincial Residents, but also of the District Officers; still it is desired that the Deputy Commissioners, and their Covenanted Assistants, though relieved of petty cases, should take an active part, not only in the decision, but also in the conduct of trials. In this country it is incumbent on the Judge not only to decide well, but to see that the intermediate portions of the suit are well managed.

2. It is expected that very material benefits will result to the administration of justice from the judicial functions of the Tehseeldar:

benefits commensurate with those which, in England, flow from the establishment of County Courts. If any intelligent native were asked, what is the first and best qualification of a Judge, he would at once reply—knowledge of the position, and insight into the character, of the persons who come before him. This quality, if possessed by any Judicial Officer, will be possessed by the Tehseeldars. They will possess it, from their local knowledge, to a greater degree than any other class of Officers. The checks of public opinion in the neighbourhood are brought to bear on the cases tried by Tehseeldars. Every suitor and witness acts under the eye of his neighbours, in the presence of many acquaintances, who constantly have some kind of business to transact at the Tehseel. This indirect, though powerful, control must be very beneficial in all petty cases. In heavier cases, other elements enter, which are more properly cognizable by the superior Officers at a distance. In all these cases which, though individually small, yet from their being so numerous, affect the happiness of the greatest number, not only can justice be done more quickly, easily and cheaply, but it can also be better administered by the Tehseeldars than by any other agency whatever. At the appointment of these Officers much regard is bestowed on Judicial qualifications, and it will be seen from Clause —— that due injunctions are laid on the District Officer, that he should repeatedly exercise, not only a formal, but a really watchful care over the Judicial proceedings of his Tehseeldars.

3. In the standard of valuation of suits, no distinction has been drawn between lands which do, and lands which do not, pay revenue to the State; inasmuch as in Section I. of Part I., it has been proposed to exclude all disputes between Mafeedars and Jagheerdars, relating to the grant itself, from the jurisdiction of the Courts; it follows that all other parties, who might sue for the ownership or possession of such rent-free land, would sue on the same terms as for all other lands; inasmuch as this land also is taxed, although the revenue is payable to the Jagheerdar or Mafeedar, instead of to the State.

4. With reference to the period of limitation, no mention has been made of the longer period (sixty years,) permitted by the Regulations in suits regarding titles acquired by fraud or violence, otherwise many titles, acquired previously to annexation, would be open to dispute unjustly, for different ideas prevailed at that time from the present regarding forcible acquisition

and possession. In connexion with this subject, the provisions of Clause 7 have been aimed at a bad practice, which has prevailed among money-lenders and other classes of creditors, of bringing heavy debts of ancient standing within the term of limitation, by the fraudulent entry of some isolated and insignificant payment. Not only is the law hereby defeated, but the Court may be often made the means of wrongfully recovering a debt which, perhaps, was never contracted at all, or was perhaps discharged by the defendant's father or ancestor.

5. As regards the "venue" of each case, it is proposed, in conformity with recent orders of Government, that the trial should be held in the District where the cause of action arose, or where the defendant ordinarily resides; or if the subject-matter be land, then in the District where the land is situated.

COMMENTARY ON SECTION II.

ORIGINAL SUITS.

1. In the Section on Original Suits, the following objects have been aimed at in the conduct of a trial:—*The first object* is, that the plaintiff should, immediately on presenting his plaint, be closely questioned, on oath, as to the nature of the claim, and the proofs thereof, both parole and documentary, in order that the Judge may know whether there are such *primâ facie* grounds, without the production of oral evidence, as might justify the summoning of the defendant against whom the claim is preferred.

2. *The second object* is, that the defendant, when summoned, should, without failure, appear, that real endeavours should be made to induce or compel him to attend, and that *ex-parte* trials should be rendered as rare as possible. Among highly civilized communities it is generally sufficient to serve a notice; the defendant, if he choose not to attend, knows the consequences, and if afterwards they press heavily on him, he may, in justice, bear them. But in the wilder tracts of the Punjab, the people do not foresee the ulterior results of legal processes. A defendant will often disobey a summons from sheer apathy and ignorance; he does not appreciate the formality, does not realize the consequences of disobedience, until he finds a decree has been passed, and is about to be executed; and then he repents too late. It is better that timely coercion, by arrest of person, or attachment of property, should be applied

to such a man, than that he should in his folly be allowed to prejudice his cause by leaving it undefended. It is more merciful to force an ignorant man to appear in Court than to pass a decree against him unheard. Forcible arrest, however, is not permitted to the peon who serves the process; such a proceeding will require a special order from the Judge. At the same time it will be observed that the procedure has been adapted to the higher classes. With them a mere warning will be sufficient; the peon having served his notice departs, and the defendant is left to send an agent to the Court, or to make such arrangements for the defence as he may think fit.

3. *The third object* is, that when both parties have appeared, the Judge should intelligently confront them, and if possible elicit the real truth from their counter-statements. If the case can be disposed of in this way to the satisfaction of the parties, then so much is gained. If it cannot, then the Judge is enabled to determine the specific issues for future hearing, and to inform the parties what is, and what is not, to be tried, so that hereafter the parties may not be troubled to produce, nor the Court to hear, irrelevant matters, nor witnesses be needlessly called to testify to immaterial points. The functions of a Judge, in this respect, are most completely described in pages 206—218 of Mr. Macpherson's Civil procedure.

4. *The fourth object* is, that both the parties, and all the witnesses, should attend in Court on the same fixed date. This is one reason among others why the defendant's answer is taken before the plaintiff's witnesses are summoned. It is expected that the whole party, suitors, witnesses, peons and all, should come into Court together, and that certain punctuality may be thereby ensured. When the various persons thus meet for the "forensic controversy," the truth will be educed, and the parties will be able to plead their own cause without the restraint of technicality, or the aid of professional counsel. The attainment of this object, that is, the attendance of the witnesses and parties on the same fixed date, and the hearing of the case on that day, is one of the most important matters in the whole procedure; and the attention of Judicial Officers cannot be too earnestly directed towards it.

5. *The fifth object* is, that the presiding Officer should take a zealous and intelligent part in the cross-questioning of the parties and the witnesses; that the evidence when drawn up by the deposition writer should not be formally read out and attested without further remark, but that the

Judge should himself converse with the witnesses, and should himself elicit the substance of the evidence; that doubt should be cleared up and discrepancies reconciled by the mutual correction of one statement by the other; that the witnesses on either side should be compelled to speak the truth by the moral control of their opponents' presence. These points can be gained by the personal attention of the Judge, and by that alone; and unless the Judge really throw his mind into the case, and realize to himself the position and feelings of parties and witnesses, satisfaction will not be given to the suitors in the case, nor will the ultimate decision carry due weight.

6. *The sixth object* is, that when arbitration may be resorted to, the arbitrators may, on the one hand, be subjected to proper impulse, and on the other hand to proper control. In the first place they must be urged to perform their functions, not in a careless and arbitrary manner, but with real industry and reflection. Unless they feel that the eye of the Judge is upon them, they will be summary in their enquiry and loose in their decision. In the second place, while every precaution is taken to render their award complete and searching, yet undue reliance must not be placed on it. Such award must not stand in the place of that judicial consideration, which the suitors have a right to expect from the presiding Officer. The assessors are to aid and not to supersede the Judge. Having fixed the precise issue to be tried by the arbitrators, and having taken their award, the Judge will give his own thought to the point from his own opinion, and make the parties feel that the case has been decided, *not by the arbitrators with the assent of the Judge,* but by *the Judge with the assistance of arbitrators.*

7. *The seventh and last object* is, that the judgment having been founded not on technicalities, but on the substantial merits of the case, should be delivered by the Judge himself to the parties, if possible on the same day on which the case has been heard. Formality is never to interfere with equity; technical errors will be rectified by the Judge as they present themselves; and forms will be treated not as subjects for dialectics, but as the fences of justice.

COMMENTARY ON SECTION III.

APPEALS.

1. SECTION III., concerning Appeals, follows the Punjab Rules. It contains only one modification introduced for the convenience, both of the appellate authorities and of the parties concerned in the appeal.

2. It may be convenient to the appellant to transmit his appeal by post, or, having presented it himself, to be excused from further attendance. There may also be cases where the respondent's presence can be dispensed with, and in which he might well be spared the trouble of attendance. The appellate authorities therefore have been authorized, at their discretion, to dispense with the attendance of either or both of the parties.

COMMENTARY ON SECTION IV.

VAKEELS.

SECTION IV. relates to Vakeels. Litigants are allowed to appoint Attorneys. Licensed Pleaders will not be appointed, inasmuch as there is not, at present, any class from which they could, with propriety, be selected. There is no material of which an intelligent and respectable Bar could be composed. Punjabees have not, as yet, learnt to follow this profession; and the Hindoostanees, who call themselves professional Vakeels, are generally not worthy of the name. They are, for the most part, pettifogging practitioners, either the refuse of the Courts of the North-Western Provinces, or men who, having been dismissed from Government employ, or other honorable Service, have come to seek their fortunes in the Punjab. It is not desired to introduce such persons into the practice of our Courts. But parties are to be left to make their own arrangements, in the belief that they will best know their own interests, and, if unable to attend themselves, will send a relation or connection to plead in their behalf.

COMMENTARY ON SECTION V.

EXECUTION OF DECREES.

1. THE Section on Execution of Decrees is, for the most part, based on the corresponding Section of the Punjab Rules.

2. The object of Clause 3 is, that measures, for the execution of a decree, should not be commenced with unnécessary harshness ; that the defendant, or his agent, should appear before the Court and have an opportunity of offering an arrangement ; and that on the failure of this, coercive steps should be taken by the express order of the Court, but not otherwise.

3. The only novel provision in this Section is the preliminary clearance of liens from property about to be sold in execution of decrees. The usual practice has been to sell property with all its liens on it, and to inform the purchaser that he will take the place of the defendant, whose rights and interests alone are offered for sale. This practice is believed, by many experienced Officers, to be prejudicial in every way. It aggravates the complications of encumbered property, and lays up a store of future litigation for all the persons interested therein. It disheartens the decree-holder, and by depreciating the property sold in execution of the decree, it keeps an unsatisfied judgment hanging over the defendant. It exercises a baneful influence on the Courts by encouraging the Judicial Officers to stave off pressing enquiries from the present to the future.

4. It is proposed to investigate all claims and objections which may be brought against property advertised for sale, and to give to the purchaser some defined and tangible right, instead of, as at present, a vague and insecure title, which neither the Court who offers, nor the person who buys, is in a position to value at its proper price. In order that the rightful holder of a lien may be put to no inconvenience, it is proposed that the original objection should be filed on plain paper. If the alleged lien should be disputed, and enquiry necessitated, then the initiatory fee will be demanded. After enquiry this impost can eventually be levied, either from the party who has pressed the sale, or from the individual who has preferred the frivolous objection. And it is believed that the knowledge of this penalty will operate beneficially, both to diminish the number of objections, as well as to prevent the unjust attachment of property.

COMMENTARY ON SECTION VI.

MORTGAGES.

1. THE procedure relative to Mortgages has been framed with a view, that the entire case, in all its bearings, should be disposed of in one and the same trial, and thus certainty secured by the saving of prospective litigation; otherwise the mortgagor might bring a suit for possession of the mortgaged property, and obtain a summary decree; then he might again sue the mortgagor for a refund of surplus profits; then the mortgagee might bring a counter-action for some unpaid residue of the original debt; and thus two, three, or even more suits might be brought in regard to the same mortgage. It is desired that this complicity may be avoided, and that all the collateral matters should be heard and adjusted at once; otherwise the possession of the mortgaged property cannot be properly adjudicated.

2. It will be seen that in the case of conditional mortgages, ample opportunity is granted to the mortgagor to redeem his property before the final foreclosure takes place.

COMMENTARY ON SECTION VII.

STAMPS.

1. THE Section on Stamps is based on the corresponding Sections of the Punjab Rules.

2. The rule proposed to be followed for levying stamp duties in the Punjab is, that the duty on documents relating to the institution and conduct of civil suits, the issue and execution of decrees, and the hearing of appeals, should be levied at half the rate current in the Regulation Provinces. It is considered, that in a new country the law taxes should be rendered as moderate as practicable.

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